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THE GENERAL STATUTES OF NORTH CAROLINA

1979 SUPPLEMENT

JAN 28 1980

Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

Under the Direction of
D. P. HARRIMAN, S. C. WILLARD AND SYLVIA FAULKNER

Volume 3D

1976 Replacement

Annotated through 297 N.C. 304 and 41 N.C. App. 192. For complete scope of annotations, see scope of volume page.

Place in Pocket of Corresponding Volume of Main Set. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

THE MICHIE COMPANY
Law Publishers
CHARLOTTESVILLE, VIRGINIA
1979

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Preface

This Supplement to Replacement Volume 3D contains the general laws of a permanent nature enacted at the first and second 1977 Sessions and the first 1979 Session of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the chapters effected by the amendatory acts.

Chapter analyses show all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the first and second 1977 Sessions and the first 1979 Session of the General Assembly affecting Chapters 157 through 168 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through volume 297, p. 304.
North Carolina Court of Appeals Reports through volume 41, p. 192.
Federal Reporter 2nd Series through volume 597, p. 283.
Federal Supplement through volume 469, p. 738.
Federal Rules Decision through volume 81, p. 262.
United States Reports through volume 438, p. 783.
Supreme Court Reporter through volume 99.
North Carolina Law Review.
Wake Forest Intramural Law Review.
Duke Law Journal.
North Carolina Central Law Journal.
Opinions of the Attorney General.

The General Statutes of North Carolina
1979 Cumulative Supplement

VOLUME 3D

Chapter 157.

Housing Authorities and Projects.

ARTICLE 1.

Housing Authorities Law.

§ 157-1. Title of Article.

Editor's Note. —
For comment, "Urban Planning and Land Use Regulation: The Need for Consistency," see 14 Wake Forest L. Rev. 81 (1978).

§ 157-3. Definitions. — The following terms, wherever used or referred to in this Article shall have the following respective meanings, unless a different meaning clearly appears from the context:

(12) "Housing project" shall include all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking

a. To demolish, clear, remove, alter or repair unsanitary or unsafe housing, and/or

b. To provide safe and sanitary dwelling accommodations for persons of low income.

The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

c. To provide safe and sanitary housing for persons of low income through payment of rent subsidies from any source.

(1977, c. 924.)

Editor's Note. — The 1977 amendment, effective Aug. 1, 1977, added paragraph c to subdivision (12). As the rest of the section was not changed by the amendment, only the introductory language and subdivision (12) are set out.

§ 157-9. Powers of authority. — An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to cooperate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to approve, assist, and cooperate with, as its instrumentality, a nonprofit corporation in providing financing by the issuance by such nonprofit corporation's obligations (which obligations shall not be or be deemed to be indebtedness of a housing authority) for one or more housing projects, pursuant to the United States Housing Act of 1937, as amended, and applicable regulations thereunder, specifically including, but not limited to, programs to make construction and other loans to developers or owners of residential housing, and to acquire, operate or manage such a housing project, and to administer federal housing assistance subsidy payments for such projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions, (i) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (ii) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (iii) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other

accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this Article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this Article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this Article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, (i) all of the stock of which shall be owned by the authority or its nominee or nominees or (ii) the board of directors of which shall be elected or appointed by the authority or is composed of the commissioners of the authority or (iii) which is otherwise subject to the control of the authority or the governmental entity which created the authority, may to the extent permitted

by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this Article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

Notwithstanding anything to the contrary contained in this Article or in any other provision of law an authority may include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project. (1935, c. 456, s. 9; 1939, c. 150; 1977, c. 784, s. 1; 1979, c. 690, s. 1; c. 805.)

Editor's Note. — The 1977 amendment, in the fifth sentence of the second paragraph, added the clause (i) designation and inserted the language beginning "or (ii) the board of directors" and ending "governmental entity which created the authority."

The first 1979 amendment deleted "(subject to the limitations hereinafter imposed)" after "pledges of its revenues, and" near the middle of the first sentence of the second paragraph.

The second 1979 amendment, inserted, in the first sentence of the second paragraph, "to approve, assist, and cooperate with, as its instrumentality, a nonprofit corporation in providing financing by the issuance of such nonprofit corporation's obligations (which obligations shall not be or be deemed to be indebtedness of a housing authority) for one or more housing projects, pursuant to the United States Housing Act of 1937, as amended, and applicable regulations thereunder, specifically including, but not limited to, programs to make construction and other loans to developers or owners of residential housing, and to acquire, operate or manage such a housing project, and to administer federal housing assistance subsidy payments for such projects."

Session Laws 1979, c. 690, s. 6, contains a severability clause.

§ 157-14. Types of bonds authority may issue.

Editor's Note. — For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 157-15. Form and sale of bonds. — The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding 60 years from their respective dates, bear interest at such rate or rates, be in such denominations (which may be made interchangeable), be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds may be sold at public or private sale; provided, however, that no public sale shall be held unless notice thereof is published once at least 10 days prior to such sale in a newspaper having a general circulation in the city in which the authority is located and in a financial newspaper published in the City of New York, New York, or in the City of Chicago, Illinois. The bonds may be sold at such price or prices as the authority shall determine.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All funds so purchased shall be cancelled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this Article shall be fully negotiable. (1935, c. 456, s. 15; 1971, c. 87, s. 1; 1977, c. 784, s. 2.)

Editor's Note. — The 1977 amendment, in the first sentence of the second paragraph, substituted "public or private sale; provided, however, that no public sale shall be held unless notice thereof is published" for "public sale held after notice published," inserted "in which the authority is located," and deleted "provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement" from the end.

§ 157-16. Provisions of bonds, trust indentures, and mortgages. — In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power:

(1) To pledge by resolution, trust indenture, mortgage, or other contract, all or any part of its rents, fees, or revenues.

(25) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the Constitution of the State and no consent or approval of any judge or court shall be required thereof. (1935, c. 456, s. 16; 1979, c. 690, ss. 2, 3.)

Editor's Note. — The 1979 amendment deleted "(subject to the limitations hereinafter imposed)" after "mortgage" in subdivision (1), and deleted "provided, however, that the authority shall have no power to mortgage all or any part of the property, real or personal, except as provided in G.S. 157-17" at the end of subdivision (25).

Session Laws 1979, c. 690, s. 6, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivisions (1) and (25) are set out.

§ 157-17. Power to mortgage when project financed with governmental aid. — In connection with the interim or permanent financing of any project to be permanently financed in whole or in part by a government, or the permanent financing of which is to be secured by a pledge of a government commitment for rental assistance payments, the authority shall also have the power, subject to the consent or approval of any government providing such financing or making such commitment for rental assistance payments, to mortgage all or any part of its property, real or personal, then owned or thereafter acquired, and thereby:

(2) To vest in a trustee or trustees the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage

through judicial proceedings or through the exercise of a power of sale without judicial proceedings.

(3) To vest in other obligees the right to foreclose such mortgage by judicial proceedings.

(1977, c. 784, s. 3.)

Editor's Note. — The 1977 amendment inserted "the interim or permanent financing of," "to be permanently," "or the permanent financing of which is to be secured by a pledge of a government commitment for rental assistance payments," "the" preceding "power," and "subject to the consent or approval of any government providing such financing or making such commitment for rental assistance payments" in the introductory paragraph, deleted "but only with the consent of the government which aided in financing the housing project involved" from the end of subdivision (2), and deleted "but only with the consent of the government which aided in financing the project involved" from the end of subdivision (3).

As subdivisions (1) and (4) were not changed by the amendment, they are not set out.

§ 157-17.1. Approval of mortgages by Local Government Commission; considerations; rules and regulations. — (a) With the exception of mortgages under G.S. 157-17, no housing authority may execute any mortgage authorized by this Chapter without the approval of the Local Government Commission.

(b) The Local Government Commission shall consider, in any application by a housing authority for approval of a mortgage, the following issues:

(1) The value of the property, and any other secured indebtedness upon the property;

(2) The ability of the authority to repay the indebtedness secured by the mortgage;

(3) Any other issues it deems necessary to insure the financial soundness of the housing authority.

(c) The Local Government Commission shall adopt rules and regulations to implement this section. (1979, c. 690, s. 5.)

Editor's Note. — Session Laws 1979, c. 690, s. 6, contains a severability clause.

§ 157-21. Limitations on remedies of obligee. — All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution shall issue against the same. No judgment against the authority shall be a charge or lien against its property, real or personal. The provisions of this section shall not apply to or limit the right of obligees of any mortgage of the authority provided for in G.S. 157-17, after foreclosure sale thereunder, to obtain a judgment or decree for any deficiency due on the indebtedness secured thereby and to issue execution on the credit of the authority. Such deficiency judgment or decree shall be a lien and charge upon the property of the authority, which may be levied on and sold by virtue of an execution or other judicial process for the purpose of satisfying such deficiency judgment or decree. (1935, c. 456, s. 21; 1979, c. 690, s. 4.)

Editor's Note. — The 1979 amendment deleted the former first sentence, which limited foreclosure of authority mortgages to those provided for in G.S. 157-17, deleted "or other judicial process" after "no execution" near the end of the present first sentence, substituted "of" for "to foreclose" after "obligees" near the beginning of the third sentence, substituted "after" for "and in case of a" near the middle of the third sentence, and inserted "to" before "issue" and "execution" near the end of that sentence.

Session Laws 1979, c. 690, s. 6, contains a severability clause.

§ 157-25. Housing bonds, legal investments and security. — The State and all public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued by a housing authority established (or hereafter established) pursuant to this Article or issued by any public housing authority or agency in the United States, when such bonds are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, or bonds which may be issued notwithstanding any other limitations of this Chapter, by a not-for-profit corporate agency of a housing authority secured by rentals payable pursuant to section 23 of the United States Housing Act of 1937, as amended, or by rental assistance payments under any other section of said act, as amended, and any such bonds shall be authorized security for all public deposits and shall be fully negotiable in this State; it being the purpose of this Article to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds and that any such bonds shall be authorized security for all public deposits and shall be fully negotiable in this State: Provided, however, that nothing contained in this Article shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities. (1935, c. 456, s. 25; 1941, c. 78, s. 3; 1971, c. 1161; 1977, c. 784, s. 4.)

Editor's Note. — The 1977 amendment inserted "or by rental assistance payments under any other section of said act, as amended" near the middle of the section.

§ 157-26. Tax exemptions. — The authority shall be exempt from the payment of any taxes or fees to the State or any subdivision thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority used for public purposes shall be exempt from all local and municipal taxes and for the purposes of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. Bonds, notes, debentures and other evidences of indebtedness of an authority (including any corporate agent thereof authorized by this Article to exercise the powers of the authority) heretofore or hereafter issued are declared to be issued for a public purpose and to be public instrumentalities and, together with the interest thereon, shall be exempt from taxes. (1935, c. 456, s. 26; 1953, c. 907; 1973, c. 695, s. 7; 1977, c. 784, s. 5.)

Editor's Note. —
The 1977 amendment inserted "(including any corporate agent thereof authorized by this Article to exercise the powers of the authority)" in the third sentence.

ARTICLE 4.

National Defense Housing Projects.

§§ 157-61 to 157-65: Reserved for future codification purposes.

ARTICLE 5.

State Indian Housing Authority.

§ 157-66. Authority created. — There is hereby created and established a public body corporate and politic to be known as the North Carolina State Indian Housing Authority. (1977, c. 1112, s. 1.)

§ 157-67. Powers of Authority; applicability of certain laws; powers of Governor and Commission of Indian Affairs. — The State Indian Housing Authority, hereafter referred to as the Authority, shall exercise its powers to provide housing for Indians of low income. Except as otherwise provided in this Article, all the provisions of law applicable to housing authorities created for municipalities pursuant to Chapter 157 of the General Statutes shall be applicable to this Authority, unless a different meaning clearly appears from the context. The Governor and the Commission of Indian Affairs are hereby authorized to exercise all appointing and other powers with respect to this Authority that are vested pursuant to said Chapter 157 in the chief executive officer and governing body of a municipality. (1977, c. 1112, s. 2.)

§ 157-68. Commissioners of Authority. — The Authority shall consist of five commissioners who shall be appointed by the Governor. Commissioners shall be selected from the following major groups of North Carolina Indians: the Haliwa, the Coharie, the Waccamaw Siouan, and the Lumbee tribes; and the Cumberland County, Guilford, and Metrolina Associations. No person shall be barred from serving as a commissioner because he is a tenant or home buyer in an Indian housing project. (1977, c. 1112, s. 3.)

§ 157-69. Area of operation. — The area of operation of the Authority shall include the entire State: Provided, that the Authority shall not undertake any housing project or projects within the area of operation of any city, county or regional housing authority unless a resolution shall have been adopted by such city, county or regional housing authority declaring that there is a need for the State Indian Housing Authority to exercise its powers within such city, county or regional housing authority's area of operation. (1977, c. 1112, s. 4.)

§ 157-70. Rentals and tenant selection in accordance with § 157-29. — Rentals and tenant selection in connection with projects of the Authority shall be in accordance with G.S. 157-29, except that tenants in such projects shall be Indians. (1977, c. 1112, s. 5.)

Chapter 158.

Local Development.

Article 2.

Economic Development Commissions.

ARTICLE 2.

Economic Development Commissions.

§ 158-13. Powers and duties. — Any economic development commission created pursuant to this Article shall:

(4a) Use grant funds to make loans for purposes permitted by the federal government, by the grant agreement and in furtherance of economic development; the economic development commission may delegate to another organization or agency the implementation of the grant's purposes, subject to approval by the federal agency involved and the commission's board of directors.

(1979, c. 775.)

Editor's Note. — The 1979 amendment added subdivision (4a).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (4a) are set out.

Chapter 159.

Local Government Finance.

SUBCHAPTER I. SHORT TITLE AND DEFINITIONS.

ARTICLE 1.

Short Title and Definitions.

§ 159-1. Short title and definitions.

Editor's Note. — For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

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SUBCHAPTER II. LOCAL GOVERNMENT COMMISSION.

ARTICLE 2.

Local Government Commission.

§ 159-3. Local Government Commission established.

Editor's Note. — For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL.

ARTICLE 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

§ 159-7. Short title; definitions; local acts superseded.

Local Modification. — Scotland: 1979, c. 187.

Editor's Note. — For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 159-8. Annual balanced budget ordinance.

(b) The budget ordinance of a unit of local government shall cover a fiscal year beginning July 1 and ending June 30. The budget ordinance of a public authority shall cover a fiscal year beginning July 1 and ending June 30, except that the Local Government Commission, if it determines that a different fiscal year would facilitate the authority's financial operations, may enter an order permitting an authority to operate under a fiscal year other than from July 1 to June 30. If the Commission does permit an authority to operate under an altered fiscal year, the Commission's order shall also modify the budget calendar set forth in G.S. 159-10 through 159-13 so as to provide a new budget calendar for the altered fiscal year that will clearly enable the authority to comply with the intent of this part. (1971, c. 780, s. 1; 1973, c. 474, s. 5; 1975, c. 514, s. 3; 1979, c. 402, s. 1.)

Editor's Note. —

The 1979 amendment substituted "provide a new budget calendar for the altered fiscal year that will clearly enable the authority to comply with the intent of this part" for "correspond with the altered fiscal year" at the end of the third sentence of subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

§ 159-11. Preparation and submission of budget and budget message.

(d) The budget officer shall include in the budget a proposed financial plan for each intragovernmental service fund, as required by G.S. 159-13.1, and information concerning capital projects and grant projects authorized or to be authorized by project ordinances, as required by G.S. 159-13.2. (1927, c. 146, s.

6; 1955, cc. 698, 724; 1969, c. 976, s. 1; 1971, c. 780, s. 1; 1975, c. 514, s. 4; 1979, c. 402, s. 2.)

Editor's Note. — The 1979 amendment inserted "and grant projects" near the middle of subsection (d). As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 159-13. The budget ordinance; form, adoption, limitations, tax levy, filing.

Applied in Hughey v. Cloninger, 37 N.C. App. 107, 245 S.E.2d 543 (1978).

§ 159-13.2. Project ordinances. — (a) Definitions.—

(1) In this section "capital project" means a project financed in whole or in part by the proceeds of bonds or notes or a project involving the construction or acquisition of a capital asset.

(2) "Grant project" means a project financed in whole or in part by revenues received from the federal and/or State government for operating or capital purposes as defined by the grant contract.

(b) Alternative Budget Methods. — A local government or public authority may, in its discretion, authorize and budget for a capital project or a grant project either in its annual budget ordinance or in a project ordinance adopted pursuant to this section. A project ordinance authorizes all appropriations necessary for the completion of the project and neither it nor any part of it need be readopted in any subsequent fiscal year. A bond order does not constitute a project ordinance.

(c) Adoption of Project Ordinances. — If a local government or public authority intends to authorize a capital project or a grant project by a project ordinance, it shall not begin the project until it has adopted a balanced project ordinance for the life of the project. A project ordinance is balanced when revenues estimated to be available for the project equal appropriations for the project. A project ordinance shall clearly identify the project and authorize its undertaking, identify the revenues that will finance the project, and make the appropriations necessary to complete the project.

(d) Project Ordinance Filed. — Each project ordinance shall be entered in the minutes of the governing board. Within five days after adoption, copies of the ordinance shall be filed with the finance officer, the budget officer, and the clerk to the governing board.

(e) Amendment. — A project ordinance may be amended in any manner so long as it continues to fulfill all requirements of this section.

(f) Inclusion of Project Information in Budget. — Each year the budget officer shall include in the budget information in such detail as he or the governing board may require concerning each grant project or capital project (i) expected to be authorized by project ordinance during the budget year and (ii) authorized by previously adopted project ordinances which will have appropriations available for expenditure during the budget year. (1975, c. 514, s. 8; 1979, c. 402, s. 3.)

Editor's Note. — The 1979 amendment rewrote this section.

§ 159-17. Ordinance procedures not applicable to budget or project ordinance adoption. — Notwithstanding the provisions of any city charter, general law, or local act:

(1) Any action with respect to the adoption or amendment of the budget ordinance or any project ordinance may be taken at any regular or special meeting of the governing board by a simple majority of those present and voting, a quorum being present;
(2) No action taken with respect to the adoption or amendment of the budget ordinance or any project ordinance need be published or is subject to any other procedural requirement governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Article;
(3) The adoption and amendment of the budget ordinance or any project ordinance and the levy of taxes in the budget ordinance are not subject to the provisions of any city charter or local act concerning initiative or referendum.

During the period beginning with the submission of the budget to the governing board and ending with the adoption of the budget ordinance, the governing board may hold any special meetings that may be necessary to complete its work on the budget ordinance. Except for the notice requirements of G.S. 143-318.14, which continue to apply, no provision of law concerning the call of special meetings applies during that period so long as (i) each member of the board has actual notice of each special meeting called for the purpose of considering the budget, and (ii) no business other than consideration of the budget is taken up. This section does not allow the holding of closed meetings or executive sessions by any governing board otherwise prohibited by law from holding such a meeting or session, and may not be construed to do so.

No general law, city charter, or local act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of this section unless it expressly so provides by specific reference to this section. (1971, c. 780, s. 1; 1973, c. 474, s. 13; 1979, c. 402, ss. 4, 5; c. 655, s. 2.)

Editor's Note. — The first 1979 amendment inserted "or any project ordinance" throughout subdivisions (1), (2), and (3).

The second 1979 amendment, effective October 1, 1979, substituted "Except for the notice requirements of G.S. 143-318.14, which continue to apply, no provision" for "any provisions" at the beginning of the third sentence of the first paragraph, and substituted "applies" for "do not apply" near the beginning of that sentence.

Part 2. Capital Reserve Funds.

§ 159-18. Capital reserve funds.

Editor's Note. —
For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

Part 3. Fiscal Control.

§ 159-26. Accounting system.

(b) Funds Required. — Each local government or public authority shall establish and maintain in its accounting system such of the following funds and ledgers as are applicable to it. The generic meaning of each type of fund or ledger listed below is that fixed by generally accepted accounting principles.

(1) General fund.
(2) Special Revenue Funds. — One or more separate funds shall be established for each of the following classes: (i) functions or activities financed in whole or in part by property taxes voted by the people, (ii)

service districts established pursuant to the Municipal or County Service District Acts, and (iii) grant project ordinances. If more than one function is accounted for in a voted tax fund, or more than one district in a service district fund, or more than one grant project in a project fund, separate accounts shall be established in the appropriate fund for each function, district, or project.

(3) Debt service funds.

(4) A Fund for Each Utility or Enterprise Owned or Operated by the Unit or Public Authority. — If a water system and a sanitary sewerage system are operated as a consolidated system, one fund may be established and maintained for the consolidated system.

(5) Intragovernmental service funds.

(6) Capital Project Funds. — Such a fund shall be established to account for the proceeds of each bond order and for all other resources used for the capital projects financed by the bond proceeds. A unit or public authority may account for two or more bond orders in one capital projects fund, but the proceeds of each such bond order and the other revenues associated with that bond order shall be separately accounted for in the fund.

(7) Trust and agency funds, including a fund for each special district, public authority, or school administrative unit whose taxes or special assessments are collected by the unit.

(8) A ledger or group of accounts in which to record the details relating to the general fixed assets of the unit or public authority.

(9) A ledger or group of accounts in which to record the details relating to the general obligation bonds and notes and other long-term obligations of the unit.

In addition, each unit or public authority may establish and maintain any other funds it considers advisable and shall establish and maintain any other funds required by other statutes or by State or federal regulations.

(1979, c. 402, s. 6.)

Editor's Note. — The 1979 amendment rewrote subdivision (2) of subsection (b). As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 159-28. Budgetary accounting for appropriations. — (a) Incurring Obligations. — No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project or a grant project authorized by a project ordinance unless that project ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection. The certificate, which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the governing board, shall take substantially the following form:

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

. . . . . .

(Signature of finance officer)."

Certificates in the form prescribed by G.S. 153-130 or 160-411 as those sections read on June 30, 1973, or by G.S. 159-28(b) as that section read on June 30, 1975, are sufficient until supplies of forms in existence on June 30, 1975, are exhausted.

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection.

(b) Disbursements. — When a bill, invoice, or other claim against a local government or public authority is presented, the finance officer shall either approve or disapprove the necessary disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget ordinance or a capital project or a grant project authorized by a project ordinance, the finance officer may approve the claim only if

(1) He determines the amount to be payable and

(2) The budget ordinance or a project ordinance includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

The finance officer may approve a bill, invoice, or other claim requiring disbursement from an intragovernmental service fund or trust or agency fund not included in the budget ordinance, only if the amount claimed is determined to be payable. A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (c) of this section, by the governing board. The finance officer shall establish procedures to assure compliance with this subsection.

(1979, c. 402, ss. 7, 8.)

Editor's Note. — The 1979 amendment inserted "or a grant project" near the beginning of the second sentence of the first paragraph of subsection (a), and near the beginning of the second sentence of subsection (b).

As the rest of the section was not changed by the amendment, only subsections (a) and (b) are set out.

§ 159-30. Investment of idle funds.

(c) Moneys may be invested in the following classes of securities, and no others:

(1) Obligations of the United States of America.

(2) Obligations of any agency or instrumentality of the United States of America if the payment of interest and principal of such obligations is fully guaranteed by the United States of America.

(3) Obligations of the State of North Carolina.

(4) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the secretary may impose.

(5) Savings certificates, investment certificates, shares of or deposits in any savings and loan association organized under the laws of this State and savings certificates, investment certificates, shares of or deposits in any federal savings and loan association having its principal office in this State to the extent that the investment in such certificates, shares or deposits is fully insured by the United States of America or an agency thereof or by any mutual deposit guaranty association authorized by the Administrator of the Savings and Loan Division of the State to do business in North Carolina pursuant to Article 7A of

Chapter 54 of the General Statutes. Provided, that moneys may be invested in said certificates, shares or deposits, whether or not so insured, to the extent that said moneys are fully secured by surety bonds, or investment securities of such nature, in such amounts, and in such manner, as may be prescribed by rule or regulation of the Local Government Commission.

(6) Obligations maturing no later than 18 months after the date of purchase of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, the Federal National Mortgage Association, the Banks for Cooperatives, and the Federal Land Banks.

(7) Any form of investment allowed by law to the State Treasurer under G.S. 147-69.1.

(1977, c. 575; 1979, c. 717, s. 2.)

Editor's Note. —

The 1977 amendment added the second sentence of subdivision (5) of subsection (c).

The 1979 amendment added "under G.S. 147-69.1" at the end of subdivision (c)(7).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 159-31. Selection of depository; deposits to be secured.

(b) The amount of funds on deposit in an official depository or deposited at interest pursuant to G.S. 159-30(b) shall be secured by deposit insurance, surety bonds, or investment securities of such nature, in a sufficient amount to protect the local government or public authority on account of deposit of funds made therein, and in such manner, as may be prescribed by rule or regulation of the Local Government Commission. When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by a local government or public authority because of the default or insolvency of the depository. No security is required for the protection of funds remitted to and received by a bank or trust company acting as fiscal agent for the payment of principal and interest on bonds or notes, when the funds are remitted no more than 60 days prior to the maturity date. (1927, c. 146, s. 19; 1929, c. 37; 1931, c. 60, s. 32; c. 296, s. 7; 1935, c. 375, s. 1; 1939, c. 129, s. 1; c. 134; 1953, c. 675, s. 28; 1955, cc. 698, 724; 1971, c. 780, s. 1; 1973, c. 474, s. 26; 1979, c. 637, s. 1.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, deleted "fully" after "shall be" near the beginning of the first sentence of subsection (b), and substituted "a sufficient amount to protect the local government or public authority on account of deposit of funds made therein" for "such amounts" near the middle of that sentence.

As only subsection (b) was changed by the amendment, the rest of the section is not set out.

§ 159-33. Semiannual reports on status of deposits and investments. — Each officer having custody of any funds of any local government or public authority shall report to the secretary of the Local Government Commission on January 1 and July 1 of each year (or such other dates as he may prescribe) the amounts of funds then in his custody, the amounts of deposits of such funds in depositories, and a list of all investment securities and time deposits held by the local government or public authority. In like manner, each bank or trust company acting as the official depository of any unit of local government or public authority may be required to report to the secretary a description of the surety bonds or investment securities securing such public deposits. If the secretary finds at any time that any funds of any unit or authority are not properly deposited or secured, or are invested in securities not eligible for investment, he shall notify the officer or depository in charge of the funds of the

failure to comply with law or applicable regulations of the Commission. Upon such notification, the officer or depository shall comply with the law or regulations within 30 days, except as to the sale of securities not eligible for investment which shall be sold within nine months at a price to be approved by the secretary. The Commission may extend the time for sale of ineligible securities, but no one extension may cover a period of more than one year. (1931, c. 60, s. 33; 1971, c. 780, s. 1; 1979, c. 637, s. 2.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, inserted "of the Local Government Commission" near the beginning of the first sentence, inserted "and" preceding "a list" near the end of that sentence, and deleted "and a description of the surety bonds or investment securities securing demand and time deposits" at the end of that sentence. The amendment added the second sentence. In the third sentence the amendment inserted "or authority" and "or depository" and added "or applicable regulations of the Commission" at the end of the sentence. The amendment also inserted "or depository" near the beginning, and "or regulations" near the middle, of the fourth sentence.

§ 159-34. Annual independent audit; rules and regulations. — (a) Each unit of local government and public authority shall have its accounts audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Commission as qualified to audit local government accounts. The auditor shall be selected by and shall report directly to the governing board. The audit contract or agreement shall be in writing, shall include all its terms and conditions, and shall be submitted to the secretary for his approval as to form, terms and conditions. The terms and conditions of the audit contract shall include the scope of the audit, and the requirement that upon completion of the examination the auditor shall prepare a typewritten or printed report embodying financial statements and his opinion and comments relating thereto. The audit shall be performed and the report prepared in conformity with generally accepted auditing standards. The finance officer shall file a copy of the audit report with the secretary, and shall submit all bills or claims for audit fees and costs to the secretary for his approval. It shall be unlawful for any unit of local government or public authority to pay or permit the payment of such bills or claims without this approval. Each officer and employee of the local government or local public authority having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce all books and records requested by the auditor and shall divulge such information relating to fiscal affairs as he may request. If any member of a governing board or any other public officer or employee shall conceal, falsify, or refuse to deliver or divulge any books, records, or information, with an intent thereby to mislead the auditor or impede or interfere with the audit, he is guilty of a misdemeanor and upon conviction thereof may be fined not more than one thousand dollars ($1,000), or imprisoned for not more than one year, or both, in the discretion of the court.

(b) The Local Government Commission has authority to issue rules and regulations for the purpose of improving the quality of auditing and the quality and comparability of reporting pursuant to this section or any similar section of the General Statutes. The rules and regulations may be varied according to the size, purpose or function of the unit, or any other criteria reasonably related to the purpose or substance of the rules or regulations. (1971, c. 780, s. 1; 1975, c. 514, s. 15; 1979, c. 402, s. 9.)

Editor's Note. —
The 1979 amendment designated the former section as subsection (a), and added subsection (b).

Part 5. Nonprofit Corporations Receiving Public Funds.

§ 159-40. Special regulations pertaining to nonprofit corporations receiving public funds. — (a) If a city or county grants or appropriates one thousand dollars ($1,000) or more in any fiscal year to a nonprofit corporation or organization, the city or county may require that the nonprofit corporation or organization have an audit performed for the fiscal year in which the funds are received and may require that the nonprofit corporation or organization file a copy of the audit report with the city or county.

(b) Any nonprofit corporation or organization which receives one thousand dollars ($1,000) or more in State funds shall, at the request of the State Auditor, submit to an audit by the office of the State Auditor for the fiscal year in which such funds were received.

(c) Every nonprofit corporation or organization which has an audit performed pursuant to this section shall file a copy of the audit report with the office of the State Auditor.

(d) The provisions of this section shall not apply to sheltered workshops or to Adult Development Activity Programs or to private residential facilities for the mentally retarded and developmentally disabled or to Developmental Day Care Centers or to any nonprofit corporation or organization whose sole use of public funds is to provide hospital services or operate as a volunteer fire department, rescue squad, ambulance squad, or which operates as a junior college, college or university duly accredited by the southern regional accrediting association.

(e) Repealed by Session Laws 1979, c. 905, effective July 1, 1979. (1977, c. 687, s. 1; 1977, 2nd Sess., c. 1195, s. 1; 1979, c. 905.)

Editor's Note. — The 1977, 2nd Sess., amendment added a subsection (e), which exempted from this section private, nonprofit corporations licensed or certified by the State and fiscally accountable to agencies of the State or to agencies of local governmental units with which they had contracted for the provision of services.

The 1979 amendment, effective July 1, 1979, rewrote subsections (a) through (d) and deleted subsection (e), which was added by the 1977, 2nd Sess., amendment.

Session Laws 1977, 2nd Sess., c. 1195, s. 2, provides: "This act is effective upon ratification and shall have retroactive application to July 1, 1977." The act was ratified June 16, 1978.

Part 6. Joint Municipal Power Agencies.

§ 159-41. Special regulations pertaining to joint municipal power agencies. — (a) For the purposes of this Part, "joint agency" means a public body corporate and politic organized in accordance with the provisions of Chapter 159B, or the combination or recombination of any joint agencies so organized.

(b) Except as provided in this Part, none of the provisions of Article 3 of this Chapter shall apply to joint agencies. Whenever the provisions of this Part and the provisions of Chapter 159B of the General Statutes shall conflict, the provisions of Chapter 159B shall govern.

(c) Each joint agency shall operate under an annual balanced budget resolution adopted by the governing board and entered into the minutes. A budget is balanced when the sum of the appropriations is equal to the sum of estimated net revenues and appropriated fund balances. The budget resolution of a joint agency shall cover a fiscal year beginning January 1 and ending December 31, except that the Local Government Commission, if it determines that a different fiscal year would facilitate the agency's financial operations, may enter an order permitting an agency to operate under a fiscal year other than from January 1 to December 31.

(d) The following directions and limitations shall bind the governing board in adopting the budget resolution:

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.
(2) The full amount of any deficit in each fund shall be appropriated.
(3) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated.
(4) The sum of estimated net revenue and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balances in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenue, as those figures stand at the close of the fiscal year preceding the budget year.

(e) The governing board of the joint agency may amend the budget resolution at any time after its adoption and may authorize its designated finance officer to transfer moneys from one appropriation to another, subject to such limitations and procedures as it may prescribe. All such transfers will be reported to the governing board or its executive committee at its next regular meeting and shall be entered in the minutes.

(f) Joint agencies are subject to the following sections of Article 3 of this Chapter, to the same extent as a "public authority," provided, however, the term "budget ordinance" as used in such sections shall be interpreted for the purposes of this Part to mean the budget resolution of a joint agency:

(1) G.S. 159-9, provided, however, that the governing board of an agency may designate as budget officer someone other than a member of the governing board or an officer or employee of the agency.
(2) G.S. 159-12, provided, however, that the provision relating to making the budget available to the news media of a county shall not apply to a joint agency.
(3) G.S. 159-13.2.
(4) G.S. 159-16.
(5) G.S. 159-18.
(6) G.S. 159-19.
(7) G.S. 159-21.
(8) G.S. 159-22, provided, however, that the provision restricting transfers to funds maintained pursuant to G.S. 159-13(a) shall not apply to a joint agency.
(9) G.S. 159-24.
(10) G.S. 159-25.
(11) G.S. 159-26.
(12) G.S. 159-28.
(13) G.S. 159-28.1.
(14) G.S. 159-29.
(15) G.S. 159-30.
(16) G.S. 159-31.
(17) G.S. 159-32.
(18) G.S. 159-33.
(19) G.S. 159-33.1.
(20) G.S. 159-34.
(21) G.S. 159-36.
(22) G.S. 159-38. (1979, c. 685, s. 1.)

Editor's Note. — Session Laws 1979, c. 685, s. 2, makes this section effective July 1, 1979.

§ 159-42: Reserved for future codification purposes.

SUBCHAPTER IV. LONG-TERM FINANCING.

ARTICLE 4.

Local Government Bond Act.

Part 1. Operation of Article.

§ 159-43. Short title; legislative intent.

Editor's Note. — For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 159-44. Definitions. — The words and phrases defined in this section shall have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

(4) "Unit," "unit of local government," or "local government" means counties; cities, towns, and incorporated villages; sanitary districts; mosquito control districts; hospital districts; metropolitan sewerage districts; metropolitan water districts; county water and sewer districts; and special airport districts.

(1977, c. 466, s. 2; 1979, c. 727, s. 2.)

Editor's Note. — The 1977 amendment substituted "metropolitan water districts; and county water and sewer districts" for "and metropolitan water districts" at the end of subdivision (4).

The 1979 amendment deleted "and" before "county water" near the end of subdivision (4), and added "and special airport districts" at the end of subdivision (4).

As the rest of the section was not changed by the amendments, only the introductory language and subdivision (4) are set out.

§ 159-48. For what purposes bonds may be issued.

(b) Each county and city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

(1) Providing airport facilities, including without limitation related land, landing fields, runways, clear zones, lighting, navigational and signal systems, hangars, terminals, offices, shops, and parking facilities.

(2) Providing armories for the North Carolina national guard.

(3) Providing auditoriums, coliseums, arenas, stadiums, civic centers, convention centers, and facilities for exhibitions, athletic and cultural events, shows, and public gatherings.

(4) Providing beach inprovements, including without limitation jetties, seawalls, groins, moles, sand dunes, vegetation, additional sand, pumps and related equipment, and drainage channels, for the control of beach erosion and the improvement of beaches.

(5) Providing cemeteries.

(6) Providing facilities for fire fighting and prevention, including without limitation headquarters buildings, station buildings, training facilities, hydrants, alarm systems, and communications systems.

(7) Providing hospital facilities, including without limitation general, tuberculosis, mental, chronic disease, and other types of hospitals and

related facilities such as laboratories, outpatient departments, nurses' homes and training facilities, and central service facilities operated in connection with hospitals; facilities for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices; facilities specially designed for the diagnosis, treatment, education, training, or custodial care of the mentally retarded, including facilities for training specialists and sheltered workshops for the mentally retarded; nursing homes; and in connection with the foregoing, laundries, nurses', doctors', or interns' residences, administrative buildings, research facilities, maintenance, storage, and utility facilities, auditoriums, dining halls, food service and preparation facilities, fire prevention facilities, mental and physical health care facilities, dental care facilities, nursing schools, mental teaching facilities, offices, parking facilities, and other supporting service structures.

(8) Providing land for corporate purposes.

(9) Providing facilities for law enforcement, including without limitation headquarters buildings, station buildings, jails and other confinement facilities, training facilities, alarm systems, and communications systems.

(10) Providing library facilities, including without limitation fixed and mobile libraries.

(11) Providing art galleries, museums, and art centers, and providing for historic properties.

(12) Providing parking facilities, including on- and off-street parking, and in connection therewith any area or place for the parking and storing of automobiles and other vehicles open to public use, with or without charge, including without limitation meters, buildings, garages, driveways, and approaches.

(13) Providing parks and recreation facilities, including without limitation land, athletic fields, parks, playgrounds, recreation centers, shelters, stadiums, arenas, permanent and temporary stands, golf courses, swimming pools, wading pools, marinas, and lighting.

(14) Providing public building, including without limitation buildings housing courtrooms, other court facilities, and council rooms, office buildings, public markets, public comfort stations, warehouses, and yards.

(15) Providing public vehicles, including without limitation those for law enforcement, fire fighting and prevention, sanitation, street paving and maintenance, safety and public health, and other corporate purposes.

(16) Providing for redevelopment through the acquisition of land and the improvement thereof for assisting local redevelopment commissions.

(17) Providing sanitary sewer systems, including without limitation community sewerage facilities for the collection, treatment, and disposal of sewage or septic tank systems and other on-site collection and disposal facilities or systems.

(18) Providing solid waste disposal systems, including without limitation land for sanitary landfills, incinerators, and other structures and buildings.

(19) Providing storm sewers and flood control facilities, including without limitation levees, dikes, diversionary channels, drains, catch basins, and other facilities for storm water drainage.

(20) Providing voting machines.

(21) Providing water systems, including without limitation facilities for the supply, storage, treatment, and distribution of water.

(22) Providing for any other purpose for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.

(23) Providing public transportation facilities, including without limitation equipment for public transportation, buses, surface and below-ground railways, ferries, and garage facilities.

(c) Each county is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of, in the case of subdivisions (1) to (4), inclusive, paying any capital costs of any one or more of the purposes mentioned therein and, in the case of subdivision (5), to finance the cost thereof:

(1) Providing community college and technical institute facilities, including without limitation buildings, plants, and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, student unions, dormitories, gymnasiums, athletic fields, cafeterias, utility plants, and garages.

(2) Providing courthouses, including without limitation offices, meeting rooms, court facilities and rooms, and detention facilities.

(3) Providing county homes for the indigent and infirm.

(4) Providing school facilities, including without limitation schoolhouses, buildings, plants and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, gymnasiums, athletic fields, lunchrooms, utility plants, garages, and school buses and other necessary vehicles.

(4a) Providing improvements to subdivision and residential streets pursuant to G.S. 153A-205.

(5) Providing for the octennial revaluation of real property for taxation.

(d) Each city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

(1) Repealed by Session Laws 1977, c. 402, s. 2.

(2) Providing cable television systems.

(3) Providing electric systems, including without limitation facilities for the generation, transmission, and distribution of electric light and power.

(4) Providing gas systems, including without limitation facilities for the production, storage, transmission and distribution of gas, where systems shall also include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such systems may be located either within the State or without.

(5) Providing streets and sidewalks, including without limitation bridges, viaducts, causeways, overpasses, underpasses, and alleys; paving, grading, resurfacing, and widening streets; sidewalks, curbs and gutters, culverts, and drains; traffic controls, signals, and markers; lighting; and grade crossings and the elimination thereof and grade separations.

(6) Improving existing systems or facilities for the transmission or distribution of telephone services.

(e) Each sanitary district, mosquito control district, hospital district, metropolitan sewerage district, metropolitan water district, county water and sewer district and special airport district is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the purposes for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.

(1977, c. 402, ss. 1, 2; c. 811; 1979, c. 619, s. 3; c. 624, s. 1; c. 727, s. 3.)

Editor's Note. —

The first 1977 amendment added subdivision (23) to subsection (b) and deleted former subdivision (1) of subsection (d), authorizing bonds for mass transit facilities.

The second 1977 amendment added subdivision (4a) to subsection (c).

The first 1979 amendment inserted "community sewerage" near the middle of subdivision (17) of subsection (b), and added "or septic tank systems and other on-site collection and disposal facilities or systems" at the end of that subdivision.

The second 1979 amendment deleted "and" after "sewerage district" and inserted "and county water and sewer district" near the beginning of subsection (e).

The third 1979 amendment deleted "and" before "county water" near the beginning of subsection (e) as amended by the second 1979 act, and inserted "and special airport district" near the beginning of the subsection.

Session Laws 1979, c. 624, ss. 6 and 7, provide:

"Sec. 6. Nothing in this act is intended to affect in any way any public or private rights or interests (i) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law amended by this act or (ii) derived from or which might be sustained or preserved in reliance upon action heretofore taken, including the adoption of orders, ordinances, or resolutions, pursuant to or within the scope of any provision of law amended by this act.

"Sec. 7. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act [May 23, 1979]."

As the rest of the section was not changed by the amendments, only subsections (b), (c), (d), and (e) are set out.

§ 159-49. When a vote of the people is required. — Bonds may be issued under this Article only if approved by a vote of the qualified voters of the issuing unit as provided in this Article, except that voter approval shall not be required for:

(1) Bonds issued for any purpose authorized by G.S. 159-48(a)(1), (2), (3), or (5).

(2) Bonds issued by a county or city for any purpose authorized by G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), or (d) (except purposes authorized by G.S. 159-48(b)(3), (11), (16), (22), or (23) or by G.S. 159-48(d)(2)) in an aggregate principal sum not exceeding two thirds of the amount by which the outstanding indebtedness of the issuing county or city has been reduced during the next preceding fiscal year.

Pursuant to Article V, Sec. 4(2) of the Constitution, the General Assembly hereby declares that the purposes authorized by G.S. 159-48(a)(4), (6), and (7) and by G.S. 159-48(b), (c), and (d) (except purposes authorized by G.S. 159-48(b)(3), (11), (16), (22), or (23) or by G.S. 159-48(d)(2)) are purposes for which bonds may be issued without a vote of the people, to the extent of two thirds of the amount by which the outstanding indebtedness of the issuing county or city was reduced in the last preceding fiscal year. (1971, c. 780, s. 1; 1973, c. 494, s. 5; 1977, c. 402, s. 3.)

Editor's Note. — The 1977 amendment inserted the references to § 159-48(b)(23) and deleted references to § 159-48(d)(1) in the parentheses in subdivision (2) and the last paragraph of the section.

Part 2. Procedure for Issuing Bonds.

§ 159-50. Notice of intent to make application for issuance of voted bonds; objection by citizens and taxpayers.

Editor's Note. — For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 159-64. Within what time bonds may be issued. — Bonds may be issued under a bond order at any time within seven years after the bond order takes effect. Such period may be extended prior to the expiration of such period from seven years to 10 years as hereinafter provided. The board of the issuing unit shall file an application for Commission approval of such extension with the secretary of the Commission. The application shall state such facts and have attached to it such documents concerning such extension as the secretary may require. The Commission may prescribe the form of such application. In determining whether to approve such extension, the Commission may inquire into and give consideration to any matters which it believes may relate to such extension.

The Commission may enter an order approving a proposed extension of the maximum time period for issuing bonds under a bond order from seven to 10 years if, upon the basis of the information and evidence it receives, it finds and determines that governmental approvals relative to the purpose to be financed in whole or in part with the proceeds of the bonds cannot be obtained within seven years after the bond order has taken effect, that funds to be applied together with the proceeds of the bonds to finance the purpose for which the bonds are to be issued will not be available within seven years after the bond order has taken effect or that the proposed extension is necessary for other reasons that are not within the direct control of the issuing unit other than any order of any court. If the Commission enters an order denying such extension, then the proceedings under this section shall be at an end.

If the Commission enters an order approving a proposed extension of the maximum time period for issuing bonds under a bond order as provided in this section, then the board shall fix the time and place for a public hearing on such extension and the clerk shall publish such bond order once with the following statement appended:

"The foregoing order took effect on ....., ... Anyone who wishes to be heard on the question of whether the maximum time period for issuing bonds under such order should be extended from seven years to 10 years after such date may appear at a public hearing or an adjournment thereof to be held at ..... on ..... at ..... (time) (date) (place).

.....
Clerk"

On the date fixed for such hearing, which shall be not earlier than six days after the date of publication of the bond order with appended statement as provided in this section, the board shall hear anyone who might wish to be heard on the question of whether the maximum time period for issuing bonds under the bond order should be extended from seven years to 10 years. The hearing may be adjourned from time to time.

After such hearing, the board may adopt an order providing that the maximum time period for issuing bonds under the bond order has been extended from seven to 10 years after the bond order has taken effect. Such order shall provide that it will take effect 30 days after its publication following adoption.

After adoption, the clerk shall publish once an order extending the maximum time period for issuing bonds under a bond order with the following statement appended:

"The foregoing order was adopted on the ..... day of ....., ..., and is hereby published this ..... day of ....., ... Any action or proceeding questioning the validity of such order must be begun within 30 days after the date of publication of this notice.

.....
Clerk"

Any action or proceeding in any court to set aside an order extending the maximum time period for issuing bonds under a bond order, or to obtain any other relief, upon the ground that such order is invalid, must be begun within 30 days after the date of publication of such order as adopted. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of such order shall be asserted nor shall the validity of such order be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section.

When the issuance of bonds under any bond order is prevented or prohibited by any order of any court, the period of time within which bonds may be issued under the bond order in litigation shall be extended by the length of time elapsing between the date of institution of the action or proceeding and the date of its final disposition.

When the issuance of bonds under any bond order, to finance public improvements in an area to be annexed, is prevented or prohibited by reason of litigation respecting the annexation and the Local Government Commission shall certify to such effect, the period of time within which bonds may be issued under the bond order shall be extended by the length of time elapsing between the date of institution of the litigation and the date of its final disposition.

The General Assembly may at any time prior to the expiration of the maximum time period herein provided extend the time for issuing bonds under bond orders.

When any such extension is effected or granted pursuant to this section, no further approval of the voters shall be required. (1917, c. 138, s. 24; 1919, c. 178, s. 3(24); C. S., s. 2950; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 32; 1939, c. 231, ss. 1, 2(d); 1947, c. 510, ss. 1, 2; 1949, c. 190, ss. 1, 2; 1951, c. 439, ss. 1, 2; 1953, c. 693, ss. 1, 3; 1955, c. 704, ss. 1, 2; 1969, c. 99; 1971, c. 780, s. 1; 1975, c. 545, s. 1; 1977, 2nd Sess., c. 1219, s. 36; 1979, c. 444, s. 1.)

Editor's Note. —

The 1977, 2nd Sess., amendment, effective July 1, 1978, added in the first paragraph the former third sentence, providing for extension of time where the issuance of bonds to finance improvements in an area to be annexed was prevented by litigation respecting the annexation.

The 1979 amendment rewrote this section.

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

Part 3. Funding and Refunding Bonds.

§ 159-72. Purposes for which funding and refunding bonds may be issued; when such bonds may be issued. — A unit of local government may issue funding and refunding bonds under this Article for the purposes listed in G.S. 159-48(a)(4), (5), (6), or (7). Funding bonds may be issued if the debt, judgment, or other obligation to be paid is payable at the time of the passage of the bond order or within one year thereafter. Refunding bonds may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds shall be applied only as follows: either (i) to the immediate payment and retirement of the obligations being refunded or (ii) if not required for the immediate payment of the obligations being refunded such proceeds shall be deposited in trust to provide for the payment and retirement of the obligations being refunded, and to pay any expenses incurred in connection with such refunding, but provision may be made for the pledging and disposition of any amounts in excess of the amounts required for such purposes, including, without limitation, provision for the pledging of any such excess to the payment of the principal of and interest on any issue or series of refunding bonds issued pursuant to G.S. 159-78. Money in any such trust fund

may be invested in (i) direct obligations of the United States government, or (ii) obligations the principal of and interest on which are guaranteed by the United States government, or (iii) to the extent then permitted by law in obligations of any agency or instrumentality of the United States government, or (iv) in certificates of deposit issued by a bank or trust company located in the State of North Carolina if such certificates shall be secured by a pledge of any of said obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing herein shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which shall not have matured and which shall not be presently redeemable or, if presently redeemable, shall not have been called for redemption.

The principal amount of refunding bonds issued pursuant to this section, together with the principal amount of refunding bonds, if any, issued under G.S. 159-78 in conjunction with refunding bonds issued pursuant to this section, shall not exceed the amount set forth in G.S. 159-78.

Except as expressly modified in this Part, funding and refunding bonds issued under the provisions of this Part shall be subject to the limitations and procedures set out in Parts 1 and 2 of this Article. (1917, c. 138, s. 16; 1919, c. 178, s. 3(16); C. S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, ss. 48, 54; 1933, c. 257, ss. 2-4; c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; c. 484; 1939, c. 231, ss. 1, 2(c), 4(b); 1941, c. 147; 1943, c. 13; 1945, c. 403; 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 856, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 11; 1977, c. 201, s. 1.)

Editor's Note. —

The 1977 amendment, in the first paragraph, substituted "funding and refunding" for "funding or refunding" in the first sentence, deleted "or refunding" following "funding" near the beginning of the second sentence, deleted "or if the debt or obligation to be refinanced is to be cancelled prior to its maturity and simultaneously with the issuance of the refunding bonds" from the end of the second sentence, and added the present third through sixth sentences. The amendment also added the present second paragraph and, in the present third paragraph, deleted "shall be" following "refunding bonds" and inserted "the provisions of this Part shall be subject to."

For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 159-78. Special obligation refunding bonds. — In conjunction with the issuance of refunding bonds pursuant to G.S. 159-72 or G.S. 159-84 a unit of local government may issue a series of refunding bonds which shall be payable from the excess of the amount required by a trust fund established pursuant to G.S. 159-72 or G.S. 159-84 to provide for the payment and retirement of the obligations being retired and the amount required to pay any expenses incurred in connection with such refunding to the extent such expenses are payable from said trust fund.

Such refunding bonds shall be special obligations of the municipality issuing them. The principal of and interest on such refunding bonds shall not be payable from the general funds of the municipality, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the trust fund established pursuant to G.S. 159-72 or G.S. 159-84 from which such refunding bonds are payable. Neither the credit nor the taxing power of the municipality is pledged for the payment of the principal or interest of such refunding bonds, and no holder of such refunding bonds has the right to compel the exercise of the taxing power of the municipality or the forfeiture of any of its property in connection with any default thereon. Every such refunding bond shall recite in substance that the principal of and interest on the bond is payable solely from the trust

fund established for its payment and that the municipality is not obligated to pay the principal or interest except from such trust fund.

Any refunding bonds issued under this section shall be issued in compliance with the procedure set forth in Article V of this Chapter.

The principal amount of any issue of refunding bonds issued pursuant to G.S. 159-72 or G.S. 159-84, together with the principal amount of refunding bonds, if any, issued pursuant to this section in conjunction with a series of bonds issued under G.S. 159-72 or G.S. 159-84, shall not exceed the sum of the following: (i) the principal amount of the obligations being refinanced, (ii) applicable redemption premiums thereon, (iii) unpaid interest on such obligations to the date of delivery or exchange of the refunding bonds, (iv) in the event the proceeds from the sale of the refunding bonds are to be deposited in trust as provided by G.S. 159-72 or G.S. 159-84, interest to accrue on such obligations being refinanced from the date of delivery of the refunding bonds to the first or any subsequent available redemption date or dates selected, in its discretion, by the governing body of the unit of local government, or to the date or dates of maturity, whichever shall be determined by the governing body of the unit of local government to be most advantageous or necessary and (v) expenses, including bond discount, deemed by the governing body to be necessary for the issuance of the refunding bonds. (1977, c. 201, s. 2.)

§ 159-79: Reserved for future codification purposes.

ARTICLE 5.

Revenue Bonds.

§ 159-80. Short title; repeal of local acts.

Editor's Note. —
For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 159-81. Definitions. — The words and phrases defined in this section shall have the meanings indicated when used in this Article:

(1) "Municipality" means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, and airport authority, a joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, but not any other forms of local government.

(1977, c. 466, s. 3; 1979, c. 727, s. 4; c. 791.)

Editor's Note. —
The 1977 amendment inserted "county water and sewer districts" in subdivision (1).

The first 1979 amendment inserted "special airport district" near the end of subdivision (1).

The second 1979 amendment, in subdivision (1), added "a joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes."

As the rest of the section was not changed by the amendments, only the introductory language and subdivision (1) are set out.

§ 159-84. Authorization of revenue bonds. — Each municipality is hereby authorized to issue its revenue bonds in such principal amount as may be

necessary to provide sufficient moneys for the acquisition, construction, reconstruction, extension, betterment, improvement, or payment of the cost of one or more revenue bond projects, including engineering, inspection, legal, and financial fees and costs, working capital, interest on the bonds or notes issued in anticipation thereof during construction and, if deemed advisable by the municipality, for a period not exceeding two years after the estimated date of completion of construction, establishment of debt service reserves, and all other expenditures of the municipality incidental and necessary or convenient thereto.

Subject to agreements with the holders of its revenue bonds, each municipality may issue further revenue bonds and refund outstanding revenue bonds whether or not they have matured. Revenue bonds may be issued partly for the purpose of refunding outstanding revenue bonds and partly for any other purpose under this Article. Revenue bonds issued to refund outstanding revenue bonds shall be issued under this Article and not Article 4 of this Chapter.

Refunding bonds may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds shall be applied only as follows: either, (i) to the immediate payment and retirement of the obligations being refunded or (ii) if not required for the immediate payment of the obligations being refunded such proceeds shall be deposited in trust to provide for the payment and retirement of the obligations being refunded, and to pay any expenses incurred in connection with such refunding, but provision may be made for the pledging and disposition of any amounts in excess of the amounts required for such purposes, including, without limitation, provision for the pledging of any such excess to the payment of the principal of and interest on any issue or series or [of] refunding bonds issued pursuant to G.S. 159-78. Money in any such trust fund may be invested in (i) direct obligations of the United States government, or (ii) obligations the principal of and interest on which are guaranteed by the United States government, or (iii) to the extent then permitted by law in obligations of any agency or instrumentality of the United States government, (iv) certificates of deposit issued by a bank or trust company located in the State of North Carolina if such certificates shall be secured by a pledge of any of said obligations described in (i), (ii), or (iii) above having any aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing herein shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which shall not have matured and which shall not be presently redeemable or, if presently redeemable, shall not have been called for redemption.

The principal amount of refunding bonds issued pursuant to this section, together with the principal amount of refunding bonds, if any, issued under G.S. 159-78 in conjunction with refunding bonds issued pursuant to this section, shall not exceed the amount set forth in G.S. 159-78. (1953, c. 692; 1969, c. 1118, s. 4; 1971, c. 780, s. 1; 1977, c. 201, s. 3.)

Editor's Note. — The 1977 amendment added the third and fourth paragraphs.

§ 159-97. Taxes for supplementing revenue bond projects.

(i) For the purposes of this section the terms county or city shall include a special airport district with respect to financing of aeronautical facilities. (1973, c. 786, s. 1; 1979, c. 727, s. 5.)

Editor's Note. — The 1979 amendment added subsection (i). As the rest of the section was not changed by the amendment, only subsection (i) is set out.

ARTICLE 7.

Issuance and Sale of Bonds.

§ 159-120. "Unit" defined.

Editor's Note. — For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 159-123. Sale of bonds by sealed bids; private sales.

(b) The following classes of bonds may be sold at private sale:

(1) Bonds that a State or federal agency has previously agreed to purchase.

(2) Any bonds for which no legal bid is received within the time allowed for submission of bids.

(3) Revenue bonds, including any refunding bonds issued pursuant to G.S. 159-84.

(4) Refunding bonds issued pursuant to G.S. 159-78.

(5) Refunding bonds issued pursuant to G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

(1977, c. 201, s. 4.)

Editor's Note. — The 1977 amendment, in subsection (b), added "including any refunding bonds issued pursuant to G.S. 159-84" to the end of subdivision (3) and added subdivisions (4) and (5).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 159-140. Bonds or notes eligible for investment. — Subject to the provisions of G.S. 159-30, bonds or notes issued under the provisions of this Chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions and agencies and all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds or notes are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or politicial subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law. (1977, c. 403.)

§§ 159-141 to 159-147: Reserved for future codification purposes.

ARTICLE 8.

Financing Agreements.

§ 159-148. Contracts subject to Article; exceptions.

Editor's Note. — For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

ARTICLE 9.

Bond Anticipation, Tax, Revenue and Grant Anticipation Notes.

Part 1. Bond Anticipation Notes.

§ 159-160. "Unit" defined.

Editor's Note. — For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 159-161. Bond anticipation notes. — At any time after a bond order has taken effect and with the approval of the Commission, the issuing unit may borrow money for the purposes for which the bonds are to be issued, in anticipation of the receipt of the proceeds of the sale of the bonds, and within the maximum authorized amount of the bond issue. General obligation bond anticipation notes shall be payable not later than seven years after the time the bond order takes effect and shall not be renewed or extended beyond such time, except that, if the issuance of bonds under the bond order is extended by an order of the board of the issuing unit which takes effect pursuant to G.S. 159-64, the bond anticipation notes may be renewed and extended and shall be payable not later than 10 years after the time the bond order takes effect and that, if the issuance of bonds under the bond order is prevented or prohibited by any order of any court, the bond anticipation notes may be renewed or extended by the length of time elapsing between the date of institution of the action or proceeding and the date of its final disposition. Any extension of the time for issuing bonds under a bond order granted by act of the General Assembly pursuant to G.S. 159-64 shall also extend the time for issuing and paying notes under this section for the same period of time. (1917, c. 138, ss. 13, 14; 1919, c. 178, s. 3(13), (14); C.S., ss. 2934, 2935; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 39; 1931, c. 293; 1939, c. 231, s. 1; 1953, c. 693, ss. 2, 4; 1969, c. 687, s. 3; 1971, c. 780, s. 1; 1973, c. 494, s. 33; 1977, c. 404, s. 1; 1979, c. 444, s. 2.)

Editor's Note. — The 1977 amendment substituted "seven years" for "five years" near the beginning of the second sentence.

The 1979 amendment inserted "extended by an order of the board of the issuing unit which takes effect pursuant to G.S. 159-64, the bond anticipation notes may be renewed and extended and shall be payable not later than 10 years after the time the bond order takes effect and that, if the issuance of bonds under the bond order is" near the middle of the second sentence.

Session Laws 1977, c. 404, s. 2, provides: "The provisions of this act shall apply to general obligation bond anticipation notes authorized by bond orders in effect on the date of this act or which shall take effect hereafter." The act was ratified May 18, 1977, and made effective on ratification.

§ 159-163. Security of revenue bond anticipation notes. — Notes issued in anticipation of the sale of revenue bonds are hereby declared special obligations of the issuing unit. Neither the credit nor the taxing power of the issuing unit may be pledged for the payment of notes issued in anticipation of the sale of revenue bonds, and no holder of a revenue bond anticipation note shall have the right to compel the exercise of the taxing power by the issuing unit or the

forfeiture of any of its property in connection with any default thereon. Notes issued in anticipation of the sale of revenue bonds shall be secured, to the extent and as provided in the resolution authorizing the issuance of such notes, by a pledge, charge, and lien upon the proceeds of the revenue bonds in anticipation of the sale of which such notes are issued and upon the revenues securing such revenue bonds; provided, however, that such notes shall be payable as to both principal and interest from such revenues if not paid from the proceeds of such revenue bonds or otherwise paid. In addition, the proceeds of each revenue bond issue are hereby pledged for the payment of any notes issued in anticipation of the sale thereof, and any such notes shall be retired from the proceeds of the sale as the first priority. (1971, c. 780, s. 1; 1979, c. 428.)

Editor's Note. — The 1979 amendment substituted the present third sentence for one which read: "Notes issued in anticipation of the sale of revenue bonds shall be secured by the same pledges, charges, liens, covenants, and agreements made to secure the revenue bonds."

Part 2. Tax, Revenue and Grant Anticipation Notes.

§ 159-168. "Unit" defined.

Editor's Note. — For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

ARTICLE 11.

Enforcement of Chapter.

§ 159-181. Enforcement of Chapter.

Editor's Note. — For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§§ 159-183 to 159-187: Reserved for future codification purposes.

ARTICLE 12.

Borrowing by Development Authorities Created by General Assembly.

§ 159-188. Borrowing authority. — A development authority created as a body corporate and politic by an act of the General Assembly, and having as its purpose to stimulate, foster, coordinate, plan, improve and encourage economic development in order to relieve poverty, dependency, chronic unemployment, underemployment and to promote the improvement and development of the economy of a county of the State, and whose members are appointed by the board of commissioners of such county, shall have authority to borrow money from an agency or instrumentality of the United States government and to execute and deliver obligations for the repayment thereof and to encumber its property for the purpose of securing any such obligation and to execute and deliver such mortgages, deeds of trust and other instruments as are necessary or proper for such purpose; provided, that such obligations shall be repayable only from the revenues of such authority.

Insofar as the provisions of this section are not consistent with the provisions of any other section or law, public or private, the provisions of this section shall be controlling. (1979, c. 512, ss. 1, 2.)

Chapter 159B.

Joint Municipal Electric Power and Energy Act.

§ 159B-3. Definitions. — The following terms whenever used or referred to in this Chapter shall have the following respective meanings unless a different meaning clearly appears from the context:

(1) "Bonds" shall mean electric revenue bonds, notes and other evidences of indebtedness of a joint agency or municipality issued under the provisions of this Chapter and shall include refunding bonds.

(2) "Cost" or "cost of a project" shall mean, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto; the cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering and inspection expenses; financing fees, expenses and costs; working capital; initial fuel costs; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing municipality or joint agency; establishment of reserves; and all other expenditures of the issuing municipality or joint agency incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project and the placing of the same in operation.

(3) "Governing board" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged by law with governing the municipality or joint agency.

(4) "Joint agency" shall mean a public body and body corporate and politic organized in accordance with the provisions of this Chapter.

(5) "Municipality" shall mean a city, town or other unit of municipal government created under the laws of the State, or any board, agency, or commission thereof, owning a system or facilities for the generation, transmission or distribution of electric power and energy for public and private uses.

(6) "Project" shall mean any system or facilities for the generation, transmission and transformation, or any of them, of electric power and energy by any means whatsoever including, but not limited to, any one or more electric generating units situated at a particular site, or any interest in the foregoing, whether an undivided interest as a tenant in common or otherwise.

(7) "State" shall mean the State of North Carolina. (1975, c. 186, s. 1; 1977, c. 708, s. 2.)

Editor's Note. — The 1977 amendment added "or any interest in the foregoing, whether an undivided interest as a tenant in common or otherwise" to the end of subdivision (6).

Session Laws 1977, c. 708, s. 4, provides: "This act shall become effective upon the date of certification of an amendment to the Constitution of North Carolina as set out in Chapter 528 of the 1977 Session Laws. If this amendment is not so certified, this act shall not become effective." The amendment was approved by the voters at the election held Nov. 8, 1977. See N.C. Const., Art. V, § 10.

Session Laws 1977, c. 708, s. 1, provides in part: "This act is intended to implement the provisions of Article V, Section 10 of the North Carolina Constitution."

§ 159B-4. Authority of municipalities to jointly cooperate. — In addition and supplemental to the powers otherwise conferred on municipalities by the laws of the State, and in order to accomplish the purposes of this Chapter and to obtain a supply of electric power and energy for the present and future needs of its inhabitants and customers, a municipality may plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, better, own, operate and maintain an undivided interest as a tenant in common in a project situated within or without the State jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with joint agencies created pursuant to this Chapter, and may make such plans and enter into such contracts in connection therewith, not inconsistent with the provisions of this Chapter, as are necessary or appropriate.

Prior to acquiring any such undivided interest the governing board shall determine the needs of the municipality for power and energy based upon engineering studies and reports, and shall not acquire an undivided interest as a tenant in common in a project in excess of that amount of capacity and the energy associated therewith required to provide for its projected needs for power and energy from and after the date the project is estimated to be placed in normal continuous operation and for such reasonable period of time thereafter as shall be determined by the governing board and approved by the North Carolina Utilities Commission in a proceeding instituted pursuant to G.S. 159B-24 of this Chapter. In determining the future power requirements of a municipality, there shall be taken into account the following:

(1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation and transmission of electric power and energy;
(2) The municipality's needs for reserve and peaking capacity and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or may become a party;
(3) The estimated useful life of such project;
(4) The estimated time necessary for the planning, development, acquisition or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply; and
(5) The reliability and availability of existing or alternative power supply sources and the cost of such existing or alternative power supply sources.

A determination by such governing board approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the quantity of the interest which a municipality may acquire in a project unless a party to the proceeding aggrieved by the determination of said Commission shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a municipality or municipalities from undertaking studies to determine whether there is a need for a project or whether such project is feasible. (1975, c. 186, s. 1; 1977, c. 385, s. 2.)

Editor's Note. — The 1977 amendment, in the first paragraph, substituted the language beginning "one or more municipalities in this State" and ending "or with joint agencies" for "one or more other municipalities, or with a joint agency" and deleted "or with municipal corporations or political subdivisions of other states (to the extent permitted by the laws of such other states)" following "pursuant to this Chapter."

§ 159B-5.1. Joint ownership with other public or private entities engaged in generation, transmission or distribution of electric power for resale. — Municipalities and joint agencies may jointly or severally own, operate and maintain projects with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale within this State or any state contiguous to this State. Any municipality or joint agency shall have for such purposes all powers conferred upon them by the provisions of this Chapter including the power to issue revenue bonds pursuant to the provisions of this Chapter to finance its share of the cost of any such project. The definitions and all other terms and provisions of this Chapter shall be construed so as to include such undivided ownership interest in order to fully effectuate the power and authority conferred by the foregoing provisions of this section. (1977, c. 708, s. 3.)

Editor's Note. — Session Laws 1977, c. 708, s. 1, provides in part: "This act is intended to implement the provisions of Article V, Section 10 of the North Carolina Constitution."

Session Laws 1977, c. 708, s. 4, provides: "This act shall become effective upon the date of certification of an amendment to the Constitution of North Carolina as set out in Chapter 528 of the 1977 Session Laws. If this amendment is not so certified, this act shall not become effective." The amendment was approved by the voters at the election held Nov. 8, 1977. See N.C. Const., Art. V, § 10.

§ 159B-9. Creation of a joint agency; board of commissioners. — (a) The governing boards of two or more municipalities may by resolution or ordinance determine that it is in the best interests of the municipalities in accomplishing the purposes of this Chapter to create a joint agency as prescribed herein for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation and maintenance of a project or projects to supply electric power and energy for their present or future needs as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project.

In determining whether or not creation of a joint agency for such purpose is in the best interests of the municipalities, the governing boards shall take into consideration, but shall not be limited to, the following:

(1) Whether or not a separate entity may be able to finance the cost of projects in a more efficient and economical manner;

(2) Whether or not better financial market acceptance may result if one entity is responsible for issuing all of the bonds required for a project or projects in a timely and orderly manner and with a uniform credit rating instead of multiple entities issuing separate issues of bonds;

(3) Whether or not savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, construction, ownership and operation of a project or projects; and

(4) Whether or not the existence of such a separate entity will foster the continuation of joint planning and undertaking of projects, and the resulting economies and efficiencies to be derived from such joint planning and undertaking.

If each governing board shall determine that it is in the best interest of the municipality to create a joint agency to provide power and energy to the municipality as provided in this Chapter, each shall adopt a resolution or

ordinance so finding (which need not prescribe in detail the basis for the determination), and which shall set forth the names of the municipalities which are proposed to be initial members of the joint agency. The governing board of the municipality shall thereupon by ordinance or resolution appoint one commissioner of the joint agency who may, at the discretion of the governing board, be an officer or employee of the municipality.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member municipalities; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing board of each respective municipality appointing a commissioner has made the aforesaid determination; (v) the desire that a joint agency be organized as a public body and a body corporate and politic under this Chapter; and (vi) the name which is proposed for the joint agency.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the joint agency is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the joint agency shall constitute a public body and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member municipalities.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint agency, the joint agency, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member municipalities by the Secretary of State. If a commissioner of any such municipality has not signed the application to the Secretary of State and such municipality does not notify the Secretary of State of the appointment of a commissioner within 40 days after receipt of such notice, such municipality shall be deemed to have elected not to be a member of the joint agency. As soon as practicable after the expiration of such 40-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those municipalities which have elected to become members of the joint agency. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the joint agency.

(c) The joint agency shall consist of a board of commissioners appointed by the respective governing boards of the municipalities which are members of the joint agency. Each commissioner shall have not less than one vote and may have in addition thereto such additional votes as the governing boards of a majority of the municipalities which are members of the agency shall determine. Each commissioner shall serve at the pleasure of the governing board by which he was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to

administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing board of the appointing municipality and spread upon its minutes. The governing boards of the municipalities may appoint one alternate commissioner to act in lieu of its appointed commissioner when the appointed commissioner is unable for any reason to attend meetings of the board of commissioners or any committee thereof. Each alternate commissioner shall serve at the pleasure of the governing board by which he is appointed and shall take, subscribe to and file an oath in the same manner as prescribed for regularly appointed commissioners. Such alternate commissioner when acting in lieu of the regularly appointed commissioner shall be deemed to be the commissioner of such municipality, and shall have the rights, powers and authority of the regularly appointed commissioner, including any committee function of said commissioner, other than such commissioner's position as an officer pursuant to paragraph (d) of this G.S. 159B-9.

(1977, c. 385, ss. 3, 4; 1979, c. 102.)

Editor's Note. — The 1977 amendment deleted "and shall cause notice of such determination to be given to the presiding officer of the governing board of the municipality who shall thereupon appoint in writing one commissioner of the joint agency" from the end of the first sentence of the third paragraph of subsection (a), added the second sentence of that paragraph, deleted the former second sentence of subsection (c), which read "Each municipality shall appoint one commissioner who may, at the discretion of the municipality, be an officer or employee of the municipality, the appointment to be made by resolution or ordinance," and substituted "governing boards of a majority of the municipalities which are members of the agency" for "members of the joint agency" in the present second sentence of subsection (c).

The 1979 amendment added the last three sentences of subsection (c).

As the rest of the section was not changed by the amendment, only subsections (a) and (c) are set out.

§ 159B-10. Executive committee, composition; powers and duties; terms. — The board of commissioners of the joint agency may create an executive committee of the board of commissioners. The board may provide for the composition of the executive committee so as to afford, in its judgment, fair representation of the member municipalities. The executive committee shall have and shall exercise such of the powers and authority of the board of commissioners during the intervals between the board's meetings as shall be prescribed in the board's rules, motions and resolutions. The terms of office of the members of the executive committee and the method of filling vacancies therein shall be fixed by the rules of the board of commissioners of the joint agency. (1975, c. 186, s. 1; 1977, c. 385, s. 5.)

Editor's Note. — The 1977 amendment substituted "have and shall exercise such of the powers and authority" for "administer the business" and "as shall be prescribed in the board's rules, motions and resolutions" for "in accordance with its rules, motions or resolutions" in the third sentence.

§ 159B-11. General powers of joint agencies; prerequisites to undertaking projects. — Each joint agency shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the rights and powers:

(10) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, own, operate and maintain one or more projects, either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or

instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter, and to pay all or any part of the costs thereof from the proceeds of bonds of the joint agency or from any other funds made available to the joint agency;

(12) To acquire by private negotiated purchase or lease or otherwise an existing project, a project under construction, or other property, either individually or jointly, with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter; to acquire by private negotiated purchase or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water, and to enter into agreements by private negotiation or otherwise, for a period not exceeding fifty (50) years, for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the acquisition, construction or operation of property by other public bodies shall be applicable to an agency created pursuant to this Chapter unless the legislature shall specifically so state;

(13) To dispose of by private negotiated sale or lease, or otherwise an existing project, a project under construction, or other property either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter; to dispose of by private negotiated sale or lease, or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the disposition of property by other public bodies shall be applicable to an agency created pursuant to this Chapter unless the legislature shall specifically so state;

(16) To negotiate and enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy with any municipality in this State or any other state owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any other state or with other joint agencies created pursuant to this Chapter, any electric membership corporation, any public utility, and any state, federal or municipal agency which owns electric generation, transmission or distribution facilities in this State or any other state;

(19a) To purchase power and energy and related services from any source on behalf of its members and other customers and to sell the same to its members and other customers in such amounts, with such characteristics, for such periods of time and under such terms and conditions as the board of commissioners of the joint agency shall determine;

(1977, c. 385, ss. 6-10.)

Editor's Note. — The 1977 amendment, in the first paragraph, inserted the language beginning "either individually or jointly" and ending "pursuant to this Chapter" in subdivision (10), rewrote subdivisions (12) and (13), inserted the language beginning "or with any political

subdivisions" and ending "pursuant to this Chapter" in subdivision (16), and added subdivision (19a).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (10), (12), (13), (16) and (19a) are set out.

§ 159B-13. Sale of excess capacity and output by a joint agency. — A joint agency may sell or exchange the excess capacity or output of a project not then required by any of its members, for such consideration and for such period and upon such other terms and conditions as may be determined by the parties, to any municipality in this State or any other state owning electric distribution facilities, to any political subdivisions, agencies or instrumentalities of any other state, to other joint agencies created pursuant to this Chapter, to any electric membership corporation or public utility authorized to do business in this State, or to any other state, federal or municipal agency which owns electric generation, transmission or distribution facilities. Provided, however, that the foregoing limitations shall not apply to the temporary sale of excess capacity and energy without the State in cases of emergency or when required to fulfill obligations under any pooling or reserve sharing agreements; provided further, however, that sales of excess capacity or output of a project to electric membership corporations, public utilities, and other persons, the interest on whose securities and other obligations is not exempt from taxation by the federal government, shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government. (1975, c. 186, s. 1; 1977, c. 385, s. 11.)

Editor's Note. — The 1977 amendment, in the first sentence, inserted "in this State or any other state," inserted "other" preceding "state, federal or municipal agency," and substituted "distribution facilities, to any political subdivisions, agencies or instrumentalities of any other state, to other joint agencies created pursuant to this Chapter" for "distribution facilities in this State."

§ 159B-27. Taxes; payments in lieu of taxes. — (a) A project jointly owned by municipalities or owned by a joint agency shall be exempt from property taxes; provided, however, that each municipality possessing an ownership share of a project, and a joint agency owning a project, shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were otherwise subject to valuation and assessment by the Department of Revenue. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes on other property. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law.

(b) Each municipality having an ownership share in a project shall pay to the State in lieu of an annual franchise or privilege tax an amount equal to six percent (6%) of that percentage of all moneys expended by said municipality on account of its ownership share, including payment of principal and interest on bonds issued to finance such ownership share, which is equal to the percentage of such city or town's total entitlement that is used or sold by it to any person, firm or corporation exempted by law from the payment of the tax on gross receipts pursuant to G.S. 105-116.

(c) Each joint agency shall pay to the State in lieu of an annual franchise or privilege tax an amount equal to six percent (6%) of the gross receipts from sales of electric power and energy, less, however, such amounts as such joint agency pays for the purchase of electric power and energy from vendors taxed on such

amounts under G.S. 105-116 and less amounts sold to any other person, firm or corporation engaged in selling such commodities or services to the public for which taxes are paid to this State.

(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three percent (3%) of all moneys expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three percent (3%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be.

(e) The reporting, payment and collection procedures contained in G.S. 105-116 shall apply to the levy herein made.

(f) Except as herein expressly provided with respect to jointly owned projects or projects owned by a joint agency no other property of a municipality used or useful in the generation, transmission and distribution of electric power and energy shall be subject to payments in lieu of taxes. (1973, c. 476, s. 193; 1975, c. 186, s. 1; 1977, c. 385, s. 12.)

Editor's Note. —

The 1977 amendment designated the former provisions of the first paragraph as subsection (a) and the former provisions of the second paragraph as subsection (f), added subsections (b) through (e), and deleted the former fourth sentence of present subsection (a), which related to a tax on power and energy derived from a municipality's ownership share of a project and power and energy sold by a joint agency.

Pursuant to Session Laws 1973, c. 476, s. 193, "Department of Revenue" has been substituted for "State Board of Assessment" in subsection (a) of this section as amended by Session Laws 1977, c. 385.

§ 159B-35. Additional method. — The foregoing sections of this Chapter shall be deemed to provide an additional, alternative and complete method for the doing of the things authorized thereby and shall be deemed and construed to be supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that insofar as the provisions of this Chapter are inconsistent with the provisions of any other general, special or local law, the provisions of this Chapter shall be controlling. Nothing in this Chapter shall be construed to authorize the issuance of bonds for the purpose of financing facilities to be owned exclusively by any private corporation. (1975, c. 186, s. 1; 1977, c. 385, s. 13.)

Editor's Note. — The 1977 amendment inserted "exclusively" in the second sentence.

Chapter 159C.

Industrial and Pollution Control Facilities Financing Act.

§ 159C-1. Short title.

Cross Reference. — For the North Carolina Industrial and Pollution Control Facilities Financing Authority Act, see § 159D-1 et seq.

Editor's Note. — Session Laws 1977, c. 198, s. 24, provides: "All existing rules and regulations of the North Carolina Department of Natural and Economic Resources applicable to General Statutes Chapter 159C shall continue in full force and effect as rules and regulations of the North Carolina Department of Commerce as successor of the Department of Natural and Economic Resources until repealed, modified or amended by the Department of Commerce."

Session Laws 1979, c. 109, s. 2, provides: "The creation, formation and organization of all authorities heretofore purported to have been created, formed and organized under the provisions of this Chapter are hereby ratified, confirmed and validated."

§ 159C-3. Definitions. — The following terms, whenever used or referred to in this Chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(6) "Financing agreement" shall mean a written instrument establishing the rights and responsibilities of the authority and the operator with respect to a project financed by the issuance of bonds. A financing agreement may be in the nature of a lease, a lease and leaseback, a sale and leaseback, a lease purchase, an installment sale and purchase agreement, a conditional sales agreement, a secured or unsecured loan agreement or other similar contract and may involve property in addition to the property financed with the bonds.

(7) "Obligor" shall mean collectively the operator and any others who shall be obligated under a financing agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the authority. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this Chapter as the obligor.

(11) "Project" shall mean any land, equipment or any [one] or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial project for industry which project may be any industrial or manufacturing factory, mill, assembly plant or fabricating plant, or freight terminal, or industrial research, development or laboratory facility, or industrial processing facility or distribution facility for industrial or manufactured products, or (ii) any pollution control project for industry or for public utilities which project may be any air pollution control facility, water pollution control facility, or solid waste disposal facility in connection with any factory, mill or plant

described in clause (i) of this subdivision or in connection with a public utility plant, or (iii) any combination of projects mentioned in clauses (i) and (ii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition thereto.

(12) "Revenues" shall mean, with respect to any project, the rents, fees, charges, payments, proceeds and other income or profit derived therefrom or from the financing agreement or security document in connection therewith.

(13) "Security document" shall mean a written instrument or instruments establishing the rights and responsibilities of the authority and the holders of bonds issued to finance a project, and may provide for, or be in the form of an agreement with, a trustee for the benefit of such bondholders. A security document may contain an assignment, pledge, mortgage or other encumbrance of all or part of the authority's interest in, or right to receive revenues with respect to, a project and any other property provided by the operator or other obligor under a financing agreement and may bear any appropriate title. A financing agreement and a security document may be combined as one instrument. (1977, 2nd Sess., c. 1197; 1979, c. 109, s. 1.)

Editor's Note. — The 1977, 2nd Sess., amendment added, in clause (i) of subdivision (11), the language beginning "or freight terminal" and ending "manufactured products."

The 1979 amendment substituted " 'Financing agreement' " for " 'Lease agreement' " at the beginning of subdivision (6) and "financing agreement" for "lease agreement" throughout subdivisions (6), (7), (12), and (13). The amendment also substituted "issuance" for "issue" near the end of the first sentence of subdivision (6), deleted "or" before "a lease purchase" near the middle of the second sentence of subdivision (6), inserted "an installment sale and purchase agreement, a conditional sales agreement, a secured or unsecured loan agreement or other similar contract" near the end of that sentence, and substituted "with" for "by" near the end of that sentence.

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (6), (7), (11), (12) and (13) are set out.

§ 159C-4. Creation of authorities. — (a) The governing body of any county is hereby authorized to create by resolution a political subdivision and body corporate and politic of the State known as "The . . . . . (the blank space to be filled in with the name of the county) County Industrial Facilities and Pollution Control Financing Authority," which shall consist of a board of seven commissioners, to be appointed by the governing body of such county in the resolution creating such authority, or by subsequent resolution. At least 30 days prior to the adoption of such resolution, the governing body of such county shall file with the Department of Commerce and the Local Government Commission of the State notice of its intention to adopt a resolution creating an authority. At the time of the appointment of the first board of commissioners the governing body of the county shall appoint two commissioners for initial terms of two years each, two commissioners for initial terms of four years each and three commissioners for initial terms of six years each and thereafter the terms of all commissioners shall be six years, except appointments to fill vacancies which shall be for the unexpired terms. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office

faithfully and impartially, and a record of each such oath shall be filed with the governing body of the county and entered in its minutes. All authority commissioners will serve at the pleasure of the governing body of the county. If at the end of any term of office of any commissioner a successor thereto shall not have been appointed, then the commissioner whose term of office shall have expired shall continue to hold office until his successor shall be so appointed and qualified.

(b) Each commissioner of an authority shall be a qualified elector and resident of the county for which the authority is created, and no commissioner shall be an elected official of the county for which the authority is created. Any commissioner of an authority may be removed, with or without cause, by the governing body of the county.

(f) Within 30 days of the date of creation of the authority, the authority shall advise the Department of Commerce and the Local Government Commission that an authority has been formed. The authority shall also furnish such Department and such Commission with (i) a list of its commissioners and its officers and (ii) a description of any projects that are under consideration by the authority. The authority shall, from time to time, notify the Department of Commerce and the Local Government Commission of changes in commissioners and officers and of new projects under consideration by the authority. (1975, c. 800, s. 1; 1977, c. 198, s. 23; c. 719, s. 1.)

Editor's Note. — The first 1977 amendment substituted "Department of Commerce" for "Department of Natural and Economic Resources" in one place in subsection (a) and in two places in subsection (f).

The second 1977 amendment substituted "elected official of the county for which the authority is created" for "officer or employee of the State or any political subdivision or any agency of either of them" at the end of the first sentence of subsection (b).

Session Laws 1977, c. 198, s. 31, contains a severability clause.

As the rest of the section was not changed by the amendments, only subsections (a), (b) and (f) are set out.

§ 159C-5. General powers. — Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the powers:

(6) To make and execute financing agreements, security documents and other contracts and instruments necessary or convenient in the exercise of the powers and functions of the authority under this Chapter;

(1979, c. 109, s. 1.)

Editor's Note. — The 1979 amendment substituted "financing agreement" for "lease agreement" near the beginning of subdivision (6).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (6) are set out.

§ 159C-6. Bonds. — Each authority is hereby authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable upon the redemption of such bonds shall be payable solely from the funds herein authorized for such payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission of North Carolina with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 30 years from the date of their issuance, and may be made redeemable before maturity at such price or prices and under such terms and

conditions, as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or a portion thereof, for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficiency. The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of any political subdivision or of any agency of either thereof, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the financing agreement and security document authorizing the issuance of such bonds and securing the same. (1975, c. 800, s. 1; 1979, c. 109, s. 1.)

Editor's Note. — The 1979 amendment substituted "financing agreement" for "lease agreement" near the end of the first sentence of the second paragraph and near the end of the third paragraph.

§ 159C-7. Approval of project. — No bonds may be issued by an authority unless the project for which the issuance thereof is proposed is first approved by the Secretary of the Department of Commerce. The authority shall file an application for approval of its proposed project with the Secretary of the Department of Commerce, and shall notify the Local Government Commission of such filing.

The Secretary shall not approve any proposed project unless he shall make all of the following, applicable findings:

(1) In the case of a proposed industrial project,

a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage (i) which is above the average weekly manufacturing wage paid in the county, or (ii) which is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State, and

b. That the proposed project will not have a materially adverse effect on the environment;

(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur; and

(3) In any case (whether the proposed project is an industrial or a pollution control project), except a pollution control project for a public utility,

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and

c. That the financing of such project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

In no case shall the Secretary of the Department of Commerce make the findings required by subdivisions (1)b and (2) of this section unless he shall have first received a certification from the Department of Natural Resources and Community Development that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. In any case where the Secretary shall make all of the required findings respecting a proposed industrial project except that prescribed in subparagraph (1)a of this section, the Secretary may, in his discretion, approve the proposed project if he shall have received (i) a resolution of the governing body of the county requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

To facilitate his review of each proposed project, the Secretary may require the authority to obtain and submit such data and information about such project as the Secretary may prescribe. In addition, the Secretary may, in his discretion, request the authority to hold a public hearing on the proposed project for the purpose of providing the Secretary directly with the views of the community to be affected. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section.

If the Secretary approves the proposed project, he shall prepare a certificate of approval evidencing such approval and setting forth his findings and shall cause said certificate of approval to be published in a newspaper of general circulation within the county. Any such approval shall be reviewable as provided in Article 4 of Chapter 150A of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. Such Superior Court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the authority, the governing body of the county and the Secretary of the Local Government Commission.

Such certificate of approval shall become effective immediately following the expiration of such 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. Such certificate shall expire one year after its date unless extended by the Secretary who shall not extend such certificate unless he shall again approve the proposed project as provided in this section. (1975, c. 800, s. 1; 1977, c. 198, s. 23; c. 719, ss. 2, 3; c. 771, s. 4; 1979, c. 109, s. 1.)

Editor's Note. — The first 1977 amendment substituted "Department of Commerce" for "Department of Natural and Economic Resources" in two places in the first paragraph and added the first sentence of the third paragraph.

The second 1977 amendment, in sub-subdivision (1)a in the second paragraph, inserted "weekly" following "pay thereafter, an average," inserted the clause (i) designation, and inserted "or (ii) which is not less than twenty percent (20%) above the average weekly manufacturing wage paid in the State." The amendment also inserted "weekly" preceding "manufacturing wage" in two places in clause (i) of the third paragraph.

The third 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the third paragraph.

The 1979 amendment substituted "ten percent (10%)" for "twenty percent (20%)" in paragraph a (ii) of subdivision (1).

Session Laws 1977, c. 198, s. 31, and c. 771, s. 22, contain severability clauses.

§ 159C-8. Approval of bonds. — No bonds may be issued by an authority unless the issuance thereof is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the Secretary of the Local Government Commission, and shall notify the Secretary of the Department of Commerce of such filing.

In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the Commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as insurance, guaranties or property to be pledged to secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

To facilitate the review of the proposed bond issue by the Commission, the Secretary may require the authority to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section. (1975, c. 800, s. 1; 1977, c. 198, s. 23; 1979, c. 109, s. 1.)

Editor's Note. — The 1977 amendment substituted "Department of Commerce" for "Department of Natural and Economic Resources" in the second paragraph.

The 1979 amendment substituted "financing agreement" for "lease agreement" at the end of the first sentence of subdivision (1), and near the middle of the first sentence of the last paragraph.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 159C-11. Financing agreements. — Every financing agreement shall provide that:

(1) The amounts payable under the financing agreement shall be sufficient to pay all of the principal of and redemption premium, if any, and interest on the bonds that shall be issued by the authority to pay the cost of the project as the same shall respectively become due;

(2) The obligor shall pay all costs incurred by the authority in connection with the financing and administration of the project, except as may be paid out of the proceeds of bonds or otherwise, including, but without limitation, insurance costs, the cost of administering the financing agreement and the security document and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants and others;

(3) The obligor shall pay all the costs and expenses of operation, maintenance and upkeep of the project; and

(4) The obligor's obligation to provide for the payment of the bonds in full shall not be subject to cancellation, termination or abatement until such payment of the bonds or provision therefor shall be made.

The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor shall have an option to purchase, or require that the obligor purchase, the project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision therefor, shall have been made.

The financing agreement may provide the authority with rights and remedies in the event of a default by the obligor thereunder including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the financing agreement;

(2) Reentry and repossession of the project;

(3) Termination of the financing agreement;

(4) Leasing or sale or foreclosure of the project to others; and

(5) Taking whatever actions at law or in equity may appear necessary or desirable to collect the amounts payable under, and to enforce covenants made in, the financing agreement.

The authority's interest in a project under a financing agreement may be that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the authority need not have any ownership or possessory interest in the project.

The authority may assign all or any of its rights and remedies under the financing agreement to the trustee or the bondholders under a security document.

Any such financing agreement may contain such additional provisions as in the determination of the authority are necessary or convenient to effectuate the purposes of this Chapter. (1975, c. 800, s. 1; 1979, c. 109, s. 1.)

Editor's Note. — The 1979 amendment substituted "financing agreement" for "leasing agreement" throughout the section, deleted former subdivision (1) of the first paragraph, which read: "The authority shall not operate the project," and redesignated former subdivisions (2), (3), (4), and (5) of the first paragraph as subdivisions (1), (2), (3), and (4) respectively. The amendment deleted "interest and" before "redemption" and inserted "and interest" near

the middle of subdivision (1) of the first paragraph. In the second paragraph, the amendment inserted "if in the nature of a lease agreement" near the beginning. In subdivision (4) of the third paragraph, the amendment inserted "or sale or foreclosure of." The amendment added the third from the last paragraph, and in the second from the last paragraph, it inserted "the" before "bondholders" and substituted "a" for "the" before "security document" near the end.

§ 159C-12. Security documents. — Bonds issued under the provisions of this Chapter may be secured by a security document which may be a trust instrument between the authority and a bank or trust company or individual within the State, or a bank or a trust company without the State, as trustee. Such security document may pledge and assign the revenues provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds and condemnation awards, and may convey or mortgage the project and other property to secure a bond issue.

The revenues and other funds derived from the project, except such part thereof as may be necessary to provide reserves therefor, if any, shall be set aside at such regular intervals as may be provided in such security document in a sinking fund which may be thereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The revenues so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the security document. Such security document may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the security document;
(2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds;
(3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds; and
(4) Rights to bring and maintain such other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depositary of the proceeds of bonds, revenues or other funds provided under this Chapter to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. All expenses incurred in carrying out the provisions of such security document may be treated as a part of the cost of the project in connection with which bonds are issued or as an expense of administration of such project.

The authority may subordinate the bonds or its rights under the financing agreement or otherwise to any prior, contemporaneous or future securities or obligations or lien, mortgage or other security interest. (1975, c. 800, s. 1; 1977, c. 719, s. 4; 1979, c. 109, s. 1.)

Editor's Note. — The 1977 amendment substituted "and a bank or trust company or individual within the State, or a bank or a trust company without the State, as trustee" for "and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State" at the end of the first sentence of the first paragraph and added the fourth paragraph.

The 1979 amendment substituted "financing agreement" for "leasing agreement" near the middle of the last paragraph.

§ 159C-14. Tax exemption. — The authority shall not be required to pay any taxes on any project or on any other property owned by the authority under the provisions of this Chapter or upon the income therefrom.

The interest on bonds issued by the authority shall be exempt from all income taxes within the State.

All projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith. (1975, c. 800, s. 1; 1977, c. 719, s. 5.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 159C-15. Construction contracts. — The authority may agree with the prospective operator that all contracts relating to the acquisition, construction, installation and equipping of a project shall be solicited, negotiated, awarded and executed by the prospective operator and its agents subject only to such approvals by the authority as the authority may require in such agreement. Such agreement may provide that the authority may, out of the proceeds of bonds, make advances to or reimburse the operator for all or a portion of its costs incurred in connection with such contracts. (1975, c. 800, s. 1; 1977, c. 719, s. 6.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 159C-16. Conflict of interest. — If any officer, commissioner or employee of the authority, or any member of the governing body of the county for which the authority is created, shall be interested either directly or indirectly in any contract with the authority, such interest shall be disclosed to the authority and the county board of commissioners and shall be set forth in the minutes of the authority and the county board of commissioners, and the officer, commissioner, employee or member having such interest therein shall not participate on behalf of the authority in the authorization of any such contract or on behalf of the governing body of the county in the approval of the bonds to be issued by the authority to finance the project, respectively; provided, however, that this section shall not apply to the ownership of less than one per centum (1%) of the stock of any operator or obligor. Failure to take any or all actions necessary to carry out the purposes of this section shall not affect the validity of bonds issued pursuant to the provisions of this Chapter. (1975, c. 800, s. 1; 1977, c. 719, s. 7.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 159C-22. Annual reports; application of Article 3, Subchapter III of Chapter 159. — Each authority shall, promptly following the close of each calendar year, submit an annual report of its activities for the preceding year to the governing body of the county for which the authority was created. Each such report shall set forth a complete operating and financial statement covering the operations of the authority during such year.

The provisions of Article 3, Subchapter III of Chapter 159 of the General Statutes of North Carolina entitled: "The Local Government Budget and Fiscal Control Act" shall have no application to authorities created pursuant to this Chapter. (1975, c. 800, s. 1; 1977, c. 719, s. 8.)

Editor's Note. — The 1977 amendment deleted the former third sentence of the first paragraph, which provided for auditing of an authority's books and records, and added the second paragraph.

§ 159C-27. Creation, etc., of prior authorities ratified. — The creation, formation and organization of all authorities heretofore [prior to June 24, 1977] purported to have been created, formed and organized are hereby ratified, confirmed and validated. (1977, c. 719, s. 9.)

§ 159C-28. Application of the U.C.C. — The provisions of G.S. 25-9-104(e) and 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of the North Carolina Uniform Commercial Code, being G.S. 25-9-101 to 25-9-607, inclusive, shall apply to transactions under Chapter 159C to the same extent the provisions of such Article 9 would apply were G.S. 25-9-104(e) and 25-9-302(6) hereby repealed. (1979, c. 109, s. 1.)

Chapter 159D.

The North Carolina Industrial and Pollution Control Facilities Financing Authority Act.

§ 159D-1. Short title. — This chapter may be referred to as "The North Carolina Industrial and Pollution Control Facilities Federal Program Financing Act." (1977, 2nd Sess., c. 1198, s. 1.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1198, s. 2, contains a severability clause.

§ 159D-2. Legislative findings and purposes. — (a) The General Assembly finds and determines that there exists in the State a critical condition of unemployment and a scarcity of employment opportunities; that the economic insecurity which results from such unemployment and scarcity of employment opportunities constitutes a serious menace to the safety, morals and general welfare of the entire State; that such unemployment and scarcity of employment opportunities have caused many workers and their families, including young adults upon whom future economic prosperity is dependent, to migrate elsewhere to find employment and establish homes; that such emigration has resulted in a reduced rate of growth in the tax base of the counties and other local governmental units of the State which impairs the financial ability of such counties and other local governmental units to support education and other local governmental services; that such unemployment results in obligations to grant public assistance and to pay unemployment compensation; that the aforesaid conditions can best be remedied by the attraction, stimulation, expansion and rehabilitation and revitalization of industrial and manufacturing facilities for industry in the State; and that there is a need to stimulate a larger flow of private investment funds into industrial building programs into [in] the State.

(b) The General Assembly further finds and determines that the development and expansion of industry within the State, which are essential to the economic growth of the State, and to the full employment and prosperity of its people, are accompanied by the increased production and discharge of gaseous, liquid, and solid pollution and wastes which threaten and endanger the health, welfare and safety of the inhabitants of the State by polluting the air, land and waters of the State; that in order to reduce, control, and prevent such environmental pollution, it is imperative that action be taken at various levels of government to require the provision of devices, equipment and facilities for the collection, reduction, treatment, and disposal of such pollution and wastes; that the assistance

provided in this Chapter, especially with respect to financing, is therefore in the public interest and serves a public purpose of the State in promoting the health, welfare and safety of the inhabitants of the State not only physically by collecting, reducing, treating and preventing environmental pollution but also economically by securing and retaining private industry thereby maintaining a higher level of employment and economic activity and stability.

(c) The General Assembly further finds that the federal government and its agencies have established, and may in the future establish, programs to promote gainful employment opportunity and the prevention and control of the pollution of air, land and waters of the United States through assistance in the financing of industrial and manufacturing facilities and pollution control facilities for industry and that the economical implementation of such programs in the State of North Carolina may require the financing of such facilities through a uniform statewide program.

(d) It is therefore declared to be the policy of the State to promote the right to gainful employment opportunity, private industry, the prevention and control of the pollution of the air, land and waters of the State, and the safety, morals and health of the people of the State, and thereby promote general welfare of the people of the State, by authorizing counties to create an authority which shall be a political subdivision and body corporate and politic of the State. This body is to be formed (i) to aid in the financing of industrial and manufacturing facilities for the purpose of alleviating unemployment or raising below average manufacturing wages by financing industrial and manufacturing facilities which provide job opportunities or pay better wages than those prevalent in the area and (ii) to aid in financing pollution control facilities for industry in connection with manufacturing and industrial facilities, in each case in connection with federal programs to effect such purposes; provided, however, that it is the policy of the State to finance only those facilities where there is a direct or indirect favorable impact on employment or an improvement in the degree of prevention or control of pollution commensurate with the size and cost of the facilities. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-3. Definitions. — The following terms, whenever used or referred to in this Chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Agency" shall include any agency, bureau, commission, department or instrumentality.

(2) "Air pollution control facility" shall mean any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing gaseous industrial waste and other air pollutants, including recovery, treatment, neutralizing or stabilizing plants and equipment and their appurtenances, which shall have been certified by the agency having jurisdiction to be in furtherance of the purpose of abating or controlling atmospheric pollutants or contaminants.

(3) "Authority" shall mean The North Carolina Industrial and Pollution Control Facilities Financing Authority, a political subdivision and body politic of the State, which may be created pursuant to the provisions of this Chapter and which shall have the powers and authority specified in and by this Chapter.

(4) "Bonds" shall mean revenue bonds of an authority issued under the provisions of this Chapter.

(5) "Cost" as applied to any project shall embrace all capital costs thereof, including the cost of construction, the cost of acquisition of all property, including rights in land and other property, both real and personal and

improved and unimproved, the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all machinery and equipment, installation, start-up expenses, financing charges, interest prior to, during and for a period not exceeding one year after completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consultants' and legal services, other expenses necessary or incident to determining the feasibility or practicability of such project, administrative and other expenses necessary or incident to the acquisition or construction of such project and the financing of the acquisition and construction thereof, including a reserve for debt services.

(6) "Federal program" shall mean a program of the federal government, or any agency thereof, under which payment of bonds or the obligations of an obligor under a financing agreement shall be guaranteed, in whole or in part, by a pledge of the full faith and credit of the United States of America.

(7) "Financing agreement" shall mean a written instrument establishing the rights and responsibilities of the authority and the operator with respect to a project financed by the issue of bonds.

(8) "Governing body" shall mean the board, commission, council or other body in which the general legislative powers of any county or other political subdivision are vested.

(9) "Obligor" shall mean collectively the operator and any others (including, but not by way of limitation, the federal government or any agency thereof) who shall be obligated under a financing agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the authority. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this Chapter as the obligor.

(10) "Operator" shall mean the person entitled to the use or occupancy of a project.

(11) "Political subdivision" shall mean any county, city, town, other unit of local government or any other governmental corporation, agency, authority or instrumentality of the State now or hereafter existing.

(12) "Pollution and pollutants" shall mean any noxious or deleterious substances in any air or waters of or adjacent to the State of North Carolina or affecting the physical, chemical or biological properties of any air or waters of or adjacent to the State of North Carolina in a manner and to an extent which renders or is likely to render such air or waters harmful or inimical to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial or agricultural purposes or recreation.

(13) "Project" shall mean any land, equipment or any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial project for industry which project may be any industrial or manufacturing factory, mill, assembly plant or fabricating plant, or freight terminal, or industrial research, development or laboratory facility or industrial processing facility for industrial or manufactured products, or (ii) any pollution control project for industry which project may be any air pollution control facility, water pollution control facility, or solid waste disposal facility in connection with any factory, mill, plant, terminal or facility described in clause (i) of this subdivision, or (iii) any combination of projects mentioned in clauses (i)

and (ii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition thereto.

(14) "Revenues" shall mean, with respect to any project, the rents, fees, charges, payments, proceeds and other income or profit derived therefrom or from the financing agreement or security document in connection therewith.

(15) "Security document" shall mean a written instrument or instruments establishing the rights and responsibilities of the authority and the holders of bonds issued to finance a project, and may provide for, or be in the form of an agreement with, a trustee for the benefit of such bondholders. A security document may contain an assignment, pledge, mortgage or other encumbrance of all or part of the authority's interest in, or right to receive revenues with respect to, a project and any other property provided by the operator or other obligor under a financing agreement and may bear any appropriate title. A financing agreement and a security document may be combined as one instrument.

(16) "Solid waste" shall mean solid waste materials resulting from any industrial or manufacturing activities or from any pollution control facility.

(17) "Solid waste disposal facility" shall mean a facility for the purpose of treating, burning, compacting, composting, storing or disposing of solid waste.

(18) "Water pollution control facility" shall mean any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing liquid industrial waste and other water pollution, including collecting, treating, neutralizing, stabilizing, cooling, segregating, holding, recycling, or disposing of liquid industrial waste and other water pollution, including necessary collector, interceptor, and outfall lines and pumping stations, which shall have been certified by the agency exercising jurisdiction to be in furtherance of the purpose of abating or controlling water pollution. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-4. Creation of the authority. — (a) The governing bodies of two or more counties are hereby authorized to create by resolution a political subdivision and body corporate and politic of the State known as "The North Carolina Industrial Facilities and Pollution Control Financing Authority," in order to effectuate in the most economical manner the acquisition, construction and financing of projects through federal programs.

If each governing body shall determine that it is in the best interest of the county to cause to be created and to become a member of the authority, each governing body shall adopt a resolution so finding and setting forth the names of the counties which are proposed to be initial members of the authority. The governing body of the county shall thereupon by ordinance or resolution appoint one commissioner of the authority.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member counties; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment

evidencing their right to office; (iv) a statement that each governing body of each respective county appointing a commissioner has made the aforesaid determination; and (v) the desire that an authority be organized as a political subdivision and a body corporate and politic under this Chapter.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the authority is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the authority shall constitute a political subdivision and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member counties.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the authority, the authority, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member counties by the Secretary of State. If a commissioner of any such county has not signed the application to the Secretary of State and such county does not notify the Secretary of State of the appointment of a commissioner within 40 days after receipt of such notice, such county shall be deemed to have elected not to be a member of the authority. As soon as practicable after the expiration of such 40-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those counties which have elected to become members of the authority. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the authority.

(b) After the creation of the authority, any county may become a member thereof upon application to the authority after adoption of a resolution or ordinance by the governing body of the county setting forth the determination and finding prescribed in paragraph (a) of this G.S. 159D-4, and authorizing said county to participate. Any county may withdraw from membership in the authority, provided, however, that all contractual rights acquired and obligations incurred while a county was a member shall remain in full force and effect.

(c) The authority shall consist of a board of commissioners appointed by the respective governing bodies of the counties which are members of the authority. Each commissioner shall have one vote. Each commissioner shall serve at the pleasure of the governing body by which he was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of such oath shall be filed with the governing body of the appointing municipality and spread upon its minutes.

(d) The board of commissioners of the authority shall annually elect from its membership a chairman and a vice-chairman and another person or persons, who

may but need not be commissioners, as treasurer, secretary and, if desired, assistant secretary. The position of secretary and treasurer or assistant secretary and treasurer may be held by the same person. The secretary of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. Either the secretary or the assistant secretary of the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

(e) A majority of the commissioners of the authority then in office shall constitute a quorum. Except as provided in subsection (f) of this G.S. 159D-4, the affirmative vote of a majority of all the commissioners of the authority shall be necessary for any action of the board. A vacancy in the board of commissioners of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each resolution shall take effect immediately and need not be published or posted. No bonds shall be issued under the provisions of this Chapter unless the issuance thereof shall have been approved by the governing body of the county in which the project with respect to which the bonds were issued is located.

(f) If at any time there shall be more than seven counties which are members of the authority, the board of commissioners of the authority may create an executive committee of the board of commissioners. The board may provide for the composition of the executive committee so as to afford, in its judgment, fair representation of the member counties. Any power of the authority under the provisions of this Chapter may be exercised by the executive committee of the authority between meetings of the authority, except that the executive committee may not overrule, reverse or disregard any action of the board of commissioners of the authority. The membership of the executive committee, terms of office of members thereof and the method of filling vacancies therein shall be fixed by the rules or bylaws of the board of commissioners.

(g) No commissioner of an authority shall receive any compensation for the performance of his duties under this Chapter; provided, however, that each commissioner shall be reimbursed for his necessary expenses incurred while engaged in the performance of duties but only from moneys provided by obligors.

(h) Within 30 days of the date of creation of the authority, the authority shall advise the Department of Commerce and the Local Government Commission that an authority has been formed. The authority shall also furnish such Department and such Commission with (i) a list of its commissioners and its officers and (ii) a description of any projects that are under consideration by the authority. The authority shall, from time to time, notify the Department of Commerce and the Local Government Commission of changes in the commissioners and officers, of counties which have become members of the authority and of new projects under consideration by the authority. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-5. General powers. — The authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the powers:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;
(3) To maintain an office at such place or places as it may determine;
(4) To sue and be sued in its own name, plead and be impleaded;
(5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;
(6) To make and execute financing agreements, security documents and other contracts and instruments necessary or convenient in the exercise of the powers and functions of the authority under this Chapter;
(7) To acquire by purchase, lease, gift or otherwise, but not by eminent domain, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, and interests in land less than the fee thereof, for the construction, operation or maintenance of any project;
(8) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
(9) To pledge or assign revenues of the authority;
(10) To construct, acquire, own, repair, maintain, extend, improve, rehabilitate, renovate, furnish and equip one or more projects and to pay all or any part of the costs thereof from the proceeds of bonds of the authority or from any contribution, gift or donation or other funds made available to the authority for such purpose;
(11) To fix, charge and collect revenues with respect to any project;
(12) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor; and
(13) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers herein granted. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-6. Bonds. — The authority is hereby authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable under the redemption of such bonds shall be payable solely from the funds herein authorized for such payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission of North Carolina with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 30 years from the date of their issuance, and may be made redeemable before maturity at such price or prices and under such terms and conditions, as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or a portion thereof, for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficiency. The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of any political subdivision or of any agency of either thereof, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the financing agreement and security document authorizing the issuance of such bonds and securing the same. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-7. Approval of project. — No bonds may be issued by the authority unless the project for which the issuance thereof is proposed is first approved by the Secretary of the Department of Commerce. The authority shall file an application for approval of its proposed project with the Secretary of the Department of Commerce, and shall notify the Local Government Commission of such filing.

The Secretary shall not approve any proposed project unless he shall make all of the following, applicable findings:

(1) In the case of a proposed industrial project,
   a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage (i) which is above the average weekly manufacturing wage paid in the county in which the project is to be located or (ii) which is not less than twenty percent (20%) above the average weekly manufacturing wage paid in the State; and
   b. That the proposed project will not have a materially adverse effect on the environment;
(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur; and
(3) In any case (whether the proposed project is an industrial or a pollution control project),
   a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,
   b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and
   c. That the financing of such project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned

because of obsolescence, lack of available labor in the area, or site limitations.

In no case shall the Secretary of the Department of Commerce make the findings required by subdivisions (1)b and (2) of this section unless he shall have first received a certification from the Department of Natural Resources and Community Development that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. In any case where the Secretary shall make all of the required findings respecting a proposed industrial project, except that prescribed in subdivision (1)a of this section, the Secretary may, in his discretion, approve the proposed project if he shall have received (i) a resolution of the governing body of the county in which the proposed project is to be located requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

To facilitate his review of each proposed project, the Secretary may require the authority to obtain and submit such data and information about such project as the Secretary may prescribe. In addition, the Secretary may, in his discretion, request the authority to hold a public hearing on the proposed project for the purpose of providing the Secretary directly with the views of the community to be affected. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section.

If the Secretary approves the proposed project, he shall prepare a certificate of approval evidencing such approval and setting forth his findings and shall cause said certificate of approval to be published in a newspaper of general circulation within the county in which the proposed project is to be located. Any such approval shall be reviewable as provided in Article 4 of Chapter 150A of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. Such superior court is hereby vested with jurisdiction to hear such action, but if no such action if filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the authority, the governing body of the county in which the proposed project is to be located and the secretary of the Local Government Commission.

Such certificate of approval shall become effective immediately following the expiration of such 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. Such certificate shall expire one year after its date unless extended by the Secretary who shall not extend such certificate unless he shall again approve the proposed project as provided in this section. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-8. Approval of bonds. — No bonds may be issued by the authority unless the issuance thereof is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the secretary of the Local Government Commission, and shall notify the Secretary of the Department of Commerce of such filing.

In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as insurance, guaranties or property to be pledged or secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

To facilitate the review of the proposed bond issue by the commission, the Secretary may require the authority to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-9. Sale of bonds. — Bonds may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission shall determine to be for the best interests of the authority and effectuate best the purposes of this Chapter irrespective of the interest limitations set forth in G.S. 24-1.1, as amended, and successor provisions provided that such sale shall be approved by the authority and the obligor. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-10. Location of projects. — Any project of the authority shall be located within the boundaries of a county which is a member of the authority. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-11. Financing agreements. — Every financing agreement shall provide that:

(1) The authority shall not operate the project;

(2) The amounts payable under the financing agreement shall be sufficient to pay all of the principal of and interest and redemption premium, if any, on the bonds that shall be issued by the authority to pay the cost of the project as the same shall respectively become due;

(3) The obligor shall pay all costs incurred by the authority in connection with the financing and administration of the project, except as may be paid out of the proceeds of bonds or otherwise, including, but without limitation, insurance costs, the cost of administering the financing agreement and the security document and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants and others;

(4) The obligor shall pay all the costs and expenses of operation, maintenance and upkeep of the project; and

(5) The obligor's obligation to provide for the payment of the bonds in full shall not be subject to cancellation, termination or abatement until such payment of the bonds or provision therefor shall be made.

The financing agreement may be in the nature of:

(1) A sale and leaseback,
(2) A lease purchase,
(3) A conditional sale,
(4) An installment sale,
(5) A secured or unsecured loan,
(6) A loan and mortgage, or
(7) Other similar transaction.

The financing agreement shall either provide that the obligor shall have an option to purchase, or require that the obligor purchase, the project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision therefor, shall have been made.

The financing agreement may provide the authority with rights and remedies in the event of a default by the obligor thereunder including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the financing agreement;
(2) Reentry and repossession of the project;
(3) Termination of the financing agreement;
(4) Leasing or sale of the project to others; and
(5) Taking whatever actions at law or in equity may appear necessary or desirable to collect the amounts payable under, and to enforce covenants made in, the financing agreement.

The authority may assign all or any of its rights and remedies under the financing agreement to the trustee or bondholders under the security document.

Any such financing agreement may contain such additional provisions as in the determination of the authority are necessary or convenient to effectuate the purposes of this Chapter. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-12. Security documents. — Bonds issued under the provisions of this Chapter may be secured by a security document which may be a trust instrument between the authority and a bank or trust company or individual within the State, or a bank or a trust company without the State, as trustee. Such security document may pledge and assign the revenues provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds and condemnation awards, and may convey or mortgage the project and other property to secure a bond issue.

The revenues and other funds derived from the project, except such part thereof as may be necessary to provide reserves therefor, if any, shall be set aside at such regular intervals as may be provided in such security document in a sinking fund which may be thereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The revenues so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the security document. Such security document may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not

in violation of law, including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the security document;
(2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds;
(3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds; and
(4) Rights to bring and maintain such other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depositary of the proceeds of bonds, revenues or other funds provided under this Chapter to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. All expenses incurred in carrying out the provisions of such security document may be treated as a part of the cost of the project in connection with which bonds are issued or as an expense of administration of such project.

The authority may subordinate the bonds or its rights under the financing agreement or otherwise to any prior, contemporaneous or future securities or obligations or lien, mortgage or other security interest.

Any such security document may contain such additional provisions as in the determination of the authority are necessary or convenient or effectuate the purposes of this Chapter. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-13. Trust funds. — Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of this Chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The security document may provide that any of such moneys may be temporarily invested and reinvested pending the disbursement thereof in such securities and other investments as shall be provided in such security document, and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purpose hereof, subject to such regulations as this Chapter and such security document may provide. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-14. Tax exemption. — The authority shall not be required to pay any taxes on any project or on any other property owned by the authority under the provisions of this Chapter or upon the income therefrom.

The interest on bonds issued by the authority shall be exempt from all income taxes within the State.

All projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-15. Construction contracts. — The authority may agree with the prospective operator that all contracts relating to the acquisition, construction, installation and equipping of a project shall be solicited, negotiated, awarded and executed by the prospective operator and its agents subject only to such approval by the authority as the authority may require in such agreement. Such agreement may provide that the authority may, out of the proceeds of bonds, make advances to or reimburse the operator for all or a portion of its costs incurred in connection with such contracts. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-16. Conflict of interest. — If any officer, commissioner or employee of the authority shall be interested either directly or indirectly in any contract

with the authority, such interest shall be disclosed to the authority and shall be set forth in the minutes of the authority, and the officer, commissioner, employee or member having such interest therein shall not participate on behalf of the authority in the authorization of any such contract; provided, however, that this section shall not apply to the ownership of less than one per centum (1%) of the stock of any operator or obligor. Failure to take any or all actions necessary to carry out the purposes of this section shall not affect the validity of bonds issued pursuant to the provisions of this Chapter. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-17. Credit of State not pledged. — Bonds issued under the provisions of this Chapter shall not be deemed to constitute a debt of the State or any political subdivision or any agency thereof or a pledge of the faith and credit of the State or any political subdivision or any such agency, but shall be payable solely from the revenues and other funds provided therefor. Each bond issued under this Chapter shall contain on the face thereof a statement to the effect that the authority shall not be obligated to pay the same or the interest thereon except from the revenues and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or any political subdivision or any agency thereof is pledged to the payment of the principal of or the interest on such bonds. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-18. Bonds eligible for investment. — Bonds issued by an authority under the provisions of this Chapter are hereby made securities in which all public officers and agencies of the State and all political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-19. Revenue refunding bonds. — (a) The authority is hereby authorized to provide by resolution for the issuance of refunding bonds of the authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the authority, for either or both of the following additional purposes:

(1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued; and

(2) Paying all or any part of the cost of any additional project or projects.

The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect to the same shall be governed by the provisions of this Chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate therefor.

The approvals required by G.S. 159D-7 and 159D-8 shall be obtained prior to the issuance of any refunding bonds; provided, however, that in the case where the refunding bonds of all or a portion of an issue are to be issued solely for the purpose of refunding outstanding bonds issued under this Chapter, the approval required by G.S. 159D-7 shall not be required as to the project financed with the bonds to be refunded.

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Refunding bonds may be

issued, in the determinination of the authority, at any time not more than five years prior to the date of maturity or maturities or the date selected for the redemption of the bonds being refunded thereby. Pending the application of the proceeds of such refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the security document securing the same, to the payment of any interest on such refunding bonds, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon will be required for the purposes intended. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-20. No power of eminent domain. — The authority shall not have any right or power to acquire any property through the exercise of eminent domain or any proceedings in the nature of eminent domain. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-21. Dissolution of the authority. — Whenever the board of commissioners of the authority and the governing bodies of two-thirds of the counties which are then members of the authority shall by joint resolution determine that the purposes for which the authority was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the authority have been fully paid or satisfied, such board of commissioners and governing bodies may declare the authority to be dissolved. On the effective date of such joint resolution, the title to all funds and other property owned by the authority at the time of such dissolution shall vest as provided in said joint resolution, and possession of such funds and other property shall forthwith be delivered as provided in said joint resolution. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-22. Annual reports; application of Article 3, Subchapter III of Chapter 159. — The authority shall, promptly following the close of each calendar year, submit an annual report of its activities for the preceding year to the governing bodies of the counties which are then members of the authority. Each such report shall set forth a complete operating and financial statement covering the operations of the authority during such year.

The provisions of Article 3, Subchapter III of Chapter 159 of the General Statutes of North Carolina entitled "The Local Government Budget and Fiscal Control Act" shall have no application to the authority. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-23. Application of Article 9 of Chapter 25. — The provisions of G.S. 25-9-104(e) and 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of North Carolina Uniform Commercial Code, being G.S. 25-9-101 to 25-9-607, inclusive, shall apply [to] transactions under this Chapter 159D to the same extent the provisions of such Article 9 would apply were G.S. 25-9-104(e) and 25-9-302(b) hereby repealed. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-24. Officers not liable. — No commissioner of any authority shall be subject to any personal liability or accountability by reason of his execution of any bonds or the issuance thereof. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-25. Additional method. — The foregoing sections of this Chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or refunding bonds under the provisions of this Chapter need not comply with the requirements of any other law applicable to the issuance of bonds. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-26. Liberal construction. — This Chapter, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect the purposes hereof. (1977, 2nd Sess., c. 1198, s. 1.)

§ 159D-27. Inconsistent laws inapplicable. — Insofar as the provisions of this Chapter are inconsistent with the provisions of any general, special or local laws, or parts thereof, the provisions of this Chapter shall be controlling. (1977, 2nd Sess., c. 1198, s. 1.)

Chapter 160.

Municipal Corporations.

SUBCHAPTER VIII. PARKING AUTHORITIES AND FACILITIES.

ARTICLE 38A.

Public Transportation Authorities.

§ 160-496.1. Title. — This Article shall be known and may be cited as the "North Carolina Public Transportation Authorities Act." (1977, c. 465.)

§ 160-496.2. Definitions. — As used in this Article, unless the context otherwise requires:

(1) "Authority" means a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "Governing body" means the board, commission, council or other body, by whatever name it may be known, in which the general legislative powers of the municipality are vested.

(3) "Municipality" means any county, city, or town of this State, and any other political subdivision, public corporation, authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, and operate public transportation systems.

(4) "Municipality's chief administrative official" means the county manager, city manager, town manager, or other person, by whatever title he shall be known, in whom the responsibility for the municipality's administrative duties is vested.

(5) "Public transportation" means transportation of passengers whether or not for hire by any means of conveyance, including but not limited to a street railway, elevated railway or guideway, subway, motor vehicle or motor bus, either publicly or privately owned and operated, holding itself out to the general public for the transportation of persons within the territorial jurisdiction of the authority, including charter service.

(6) "Public transportation system" means, without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, vehicle parking or other facilities, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation. (1977, c. 465.)

§ 160-496.3. Creation; membership. — A municipality may, by resolution or ordinance, create a transportation authority, hereinafter sometimes referred to as the "authority." It shall be a body corporate and politic. It shall consist of up to 11 members as determined by the governing body of the municipality.

Members of the authority shall reside within the territorial jurisdiction of the authority as hereinafter set out. They shall be appointed by the governing body of the municipality. The terms of the members shall be fixed by the governing body. Appointments to fill vacancies occurring during the regular terms shall be made by the governing body. The appointments of all members shall run until their successors are appointed and qualified.

The members of the authority shall elect a chairman and vice-chairman from the membership of the authority. They shall also elect a secretary who may, or may not, be a member of the authority.

A majority of the members shall constitute a quorum for the transaction of business and an affirmative vote of the majority of the members present at a meeting of the authority shall be required to constitute action of the authority. Members of the authority shall receive such compensation, if any, as may be fixed by the governing body of the municipality. (1977, c. 465.)

§ 160-496.4. Purpose of the authority. — The purpose of the authority shall be to provide for a safe, adequate and convenient public transportation system for the municipality creating the authority and for its immediate environs, through the granting of franchises, ownership and leasing of terminals, buses and other transportation facilities and equipment, and otherwise through the exercise of the powers and duties conferred upon it. (1977, c. 465.)

§ 160-496.5. General powers of the authority. — The general powers of the authority shall include any or all of the following:

(1) To sue and be sued;
(2) To have a seal;
(3) To make rules and regulations, not inconsistent with this Chapter, for its organization and internal management;
(4) To employ persons deemed necessary to carry out the management functions and duties assigned to them by the authority and to fix their compensation, within the limit of available funds;
(5) With the approval of the municipality's chief administrative official, to use officers, employees, agents and facilities of the municipality for such purposes and upon such terms as may be mutually agreeable;
(6) To retain and employ counsel, auditors, engineers and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice;
(7) To acquire, maintain and operate such lands, buildings, structures, facilities, and equipment as may be necessary or convenient for the operations of the authority and for the operation of a public transportation system;
(8) To make or enter into contracts, agreements, deeds, leases, conveyances or other instruments, including contracts and agreements with the United States and the State of North Carolina;
(9) To surrender to the municipality any property no longer required by the authority;
(10) To make plans, surveys and studies of public transportation facilities within the territorial jurisdiction of the authority and to prepare and make recommendations in regard thereto;
(11) To enter into and perform contracts with public transportation companies with respect to the operation of public passenger transportation;

(12) To issue certificates of public convenience and necessity; and to grant franchises and enter into franchise agreements and in all respects to regulate the operation of buses, taxicabs and other methods of public passenger transportation which originate and terminate within the territorial jurisdiction of the authority as fully as the municipality is now or hereafter empowered to do within the territorial jurisdiction of the municipality;

(13) To operate public transportation systems and to enter into and perform contracts to operate public transportation services and facilities and to own or lease property, facilities and equipment necessary or convenient therefor, and to rent, lease or otherwise sell the right to do so to any person, public or private; further, to the extent authorized by resolution or ordinance of the municipality to obtain grants, loans and assistance from the United States, the State, any public body, or any private source whatsoever;

(14) To enter into and perform contracts and agreements with other public transportation authorities pursuant to the provisions of G.S. 160A-460 through 160A-464 of Part 1 of Article 20 of Chapter 160A of the General Statutes; in addition, to enter into and perform contracts with other units of local government when specifically authorized by the governing body, pursuant to the provisions of G.S. 160A-460 through 160A-464 of Part 1 of Article 20 of Chapter 160A of the General Statutes;

(15) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the authority. (1977, c. 465.)

§ 160-496.6. Authority of Utilities Commission not affected. — Except as otherwise provided herein, nothing in this Article shall be construed to limit or otherwise affect the power or authority of the North Carolina Utilities Commission or the right of appeal to the North Carolina Utilities Commission as provided by law. (1977, c. 465.)

§ 160-496.7. Territorial jurisdiction. — The jurisdiction of the authority shall extend to all local public passenger transportation operating within the municipality. Said jurisdiction shall also extend up to 30 miles outside of the corporate limits of the municipality where the municipality is a town or city, and up to five miles outside of the boundaries of the municipality where the municipality is a county or up to five miles outside of the combined boundaries of a group of counties. The authority shall not have jurisdiction over public transportation subject to the jurisdiction of and regulated by the I.C.C., nor shall it have jurisdiction over intrastate public transportation classified as common carriers of passengers by the North Carolina Utilities Commission. A public transportation authority shall not extend service into a political subdivision without the consent of the governing body of that political subdivision. A majority vote of the governing body shall constitute consent. (1977, c. 465.)

§ 160-496.8. Fiscal accountability. — The authority shall be fiscally accountable to the municipality, and the municipality's governing body shall have authority to examine all records and accounts of the authority at any time. (1977, c. 465.)

§ 160-496.9. Funds. — The establishment and operation of a transportation authority as herein authorized are governmental functions and constitute a public purpose, and the municipality is hereby authorized to appropriate funds to support the establishment and operation of the transit authority. The municipality may also dedicate, sell, convey, donate or lease any of its interest

in any property to the authority. Further, the authority is hereby authorized to establish such license and regulatory fees and charges as it may deem appropriate, subject to the approval of the governing body of the municipality. If the governing body finds that the funds otherwise available are insufficient, it may call a special election without a petition and submit to the qualified voters of the municipality the question of whether or not a special tax shall be levied and/or bonds issued, specifying the maximum amount thereof, for the purpose of acquiring lands, buildings, equipment and facilities and for the operations of the transit authority. (1977, c. 465.)

§ 160-496.10. Effect on existing franchises and operations. — In the event a transportation authority is established under the authority of this Article, any existing franchises granted by the municipality shall continue in full force and effect until legally terminated; further, all ordinances and resolutions of the municipality regulating bus operations and taxicabs shall continue in full force and effect until superseded by regulations of the transportation authority. (1977, c. 465.)

§ 160-496.11. Termination. — The governing body of the municipality shall have the authority to terminate the existence of the authority at any time. In the event of such termination, all property and assets of the authority shall automatically become the property of the municipality and the municipality shall succeed to all rights, obligations and liabilities of the authority. (1977, c. 465.)

§ 160-496.12. Controlling provisions. — Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling. (1977, c. 465.)

§ 160-496.13. Consolidation of public transportation authority and parking authority. — The municipality may, by resolution or ordinance, vest in a single body corporate and politic both the powers of a public transportation authority in accordance with the provisions of this Article and the powers of a parking authority in accordance with the provisions of Article 38 of Chapter 160 of the General Statutes. Notwithstanding the membership provisions of G.S. 160-478, the members of a consolidated body created pursuant to this section shall be selected according to the provisions of G.S. 160-496.3. (1977, c. 465.)

§ 160-496.14. Joint provision of services. — Two or more municipalities may cooperate in the exercise of any power granted by this Article according to the procedures and provisions of G.S. 160A-460 through 160A-464 of Part 1 of Article 20 of Chapter 160A of the General Statutes. Additional municipalities may join an existing transportation authority upon making satisfactory arrangements pursuant to the provisions of G.S. 160A-460 through 160A-464 of Part 1 of Article 20 of Chapter 160A of the General Statutes. (1977, c. 465.)

Chapter 160A.

Cities and Towns.

Article 15.

Streets, Traffic and Parking.

Sec.

160A-296. Establishment and control of streets.
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Article 16.

Public Enterprises.

Part 1. General Provisions.

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160A-411.1. Qualifications of inspectors.
160A-429. Order to take corrective action.

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160A-457. Acquisition and disposition of property for redevelopment.
160A-458, 160A-459. [Reserved.]

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Part 1. Joint Exercise of Powers.

160A-460. Definitions.
160A-465. [Repealed.]

Part 2. Regional Councils of Governments.

160A-475. Specific powers of council.

Article 21.

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160A-497. Senior citizens programs.
160A-498, 160A-499. [Reserved.]

Article 22.

Urban Redevelopment Law.

160A-511. Interest of members or employees.

Article 23.

Municipal Service Districts.

160A-536. Purposes for which districts may be established.
160A-538.1. Reduction of service districts.
160A-544. Exclusion of personal property of public service corporations.

ARTICLE 1A.

Municipal Board of Control.

§ 160A-9.2. Necessary findings by the Board. — The Board shall enter an order incorporating the area if, upon the information and evidence it receives, it finds:

(1) That incorporation of the area is necessary or expedient and in the public interest.

(2) That the area has a permanent resident population of at least 500 or a seasonal population of at least 1,000.

(3) That the appraised value of property subject to taxation by the city will be sufficient to enable it to provide appropriate municipal services to its citizens.

(4) That no portion of the area lies within one mile of the corporate limits of any other city having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or within three miles of the corporate limits of any other city having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or within four miles of the corporate limits of any other city having a population of 25,000 or more according to the most recent decennial census of population taken by order of Congress, or within five miles of the corporate limits of any other city having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress.

(5) That at least sixty percent (60%) of the area within the proposed city is already developed for residential, commercial, industrial, institutional, or governmental uses, and that the remaining area is not separated from the developed area by natural barriers to urban growth.

In making the findings required by this section, the Board may call upon the division of community planning of the Department of Natural Resources and Community Development for technical assistance.

If the area does not meet all of the criteria set out in this section, the Board may not incorporate it as a city. (1971, c. 896, s. 9; c. 921, s. 6; 1973, c. 426, s. 5; c. 1262, s. 51; 1975, c. 664, s. 4; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" near the end of the second paragraph.

ARTICLE 2.

General Corporate Powers.

§ 160A-11. Corporate powers.

Editor's Note. — For note on abrogation of contractual sovereign immunity, see 12 Wake Forest L. Rev. 1082 (1976).

Cited in Carolina Action v. Pickard, 465 F. Supp. 576 (W.D.N.C. 1979).

ARTICLE 3.

Contracts.

§ 160A-18. Certain deeds validated.

(b1) All conveyances of any interest in real property by private sale, including conveyance in fee, made by the governing body of any county before January 1, 1977 are hereby validated, ratified, and confirmed notwithstanding the fact that such conveyances were made by private sale, without advertisement, and not after notice and public outcry.

(c) Nothing in this section shall affect any action or proceeding begun before January 1, 1977. (Ex. Sess. 1924, c. 95; 1951, c. 44; 1959, c. 487; 1971, c. 698, s. 1; 1977, c. 1103.)

Editor's Note. — The 1977 amendment added subsection (b1) and substituted "January 1, 1977" for "January 1, 1972" at the end of subsection (c).

As the rest of the section was not changed by the amendment, only subsections (b1) and (c) are set out.

§ 160A-20. Purchase money security interests. — Cities and counties are authorized to purchase real or personal property by installment contracts which create in the property purchased a security interest to secure payment of the purchase money. A contract entered into under this section is subject to the applicable provisions of Article 8 of Chapter 159 of the General Statutes. No deficiency judgment may be rendered against any city or county in any action for breach of a contractual obligation authorized by this section, and the taxing power of a city or county is not and may not be pledged directly or indirectly to secure any moneys due to the seller. Any contract made or entered into by a city or county before June 1, 1979, which would have been valid hereunder is hereby validated, ratified and confirmed. (1979, c. 743.)

ARTICLE 4.

Corporate Limits.

Part 1. General Provisions.

§ 160A-21. Existing boundaries.

Quoted in Jones v. Jeanette, 34 N.C. App. 526, 239 S.E.2d 293 (1977).

ARTICLE 4A.

Extension of Corporate Limits.

Part 1. Extension by Referendum or Petition.

§ 160A-24. Procedure for adoption of ordinance extending limits; effect of adoption when no election required; public hearing and notice thereof. — After public notice has been given by publication once a week for four successive weeks in a newspaper in the county with a general circulation in the municipality, or if there be no such paper, by posting notice in five or more public places within

the municipality, describing by metes and bounds the territory to be annexed, thus notifying the owner or owners of the property located in such territory, that a session of the municipal legislative body will meet for the purpose of considering the annexation of such territory to the municipality, the governing body of any municipality is authorized and empowered to adopt an ordinance extending its corporate limits by annexing thereto any contiguous tract or tracts of land not embraced within the corporate limits of some other municipality. Provided, that it shall be essential and necessary to the validity of any ordinance extending the corporate limits of any municipality by annexation, pursuant to this section, to actually hold a public hearing pursuant to the notice herein required, and that a statement by or on behalf of the municipal governing body, of the purpose or reasons for the proposed extension of the corporate limits be made at the beginning of the public hearing, and that reasonable opportunity to be heard be given any who attend such public hearing with regard thereto. The public notice shall (i) fix the date, hour and place of the public hearing, and (ii) describe clearly the boundaries of the area under consideration. Then from and after the date of the adoption of such ordinance, unless an election is required as herein provided, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in said city or town and shall be entitled to the same privileges and benefits as other parts of said city or town. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. (1947, c. 725, s. 1; 1967, c. 929; 1973, c. 426, s. 74; 1975, c. 576, s. 1; 1977, c. 517, s. 2.)

Editor's Note. —

The 1977 amendment substituted the present fifth sentence for the former fifth through eighth sentences, which pertained to the liability of a territory for municipal taxes for the fiscal year in which it was annexed.

Session Laws 1977, c. 517, s. 10, provides: "If an annexation became or becomes effective after December 31, 1975, and before July 1, 1977, and newly annexed property was or is taxed under the procedures of G.S. 160A-24, G.S. 160A-31(e), G.S. 160A-37(f), G.S. 160A-49(f), or G.S. 160A-58.3, as those sections read immediately before the effective date of Chapter 576 of the 1975 Session Laws, that method of taxation is hereby validated. No person may be held liable under G.S. 105-380 or any other statute because those procedures were followed rather than the procedures established by Chapter 576 of the 1975 Session Laws."

Session Laws 1977, c. 517, s. 11, provides: "This act becomes effective upon ratification. However, any annexation already adopted on or before July 3, 1977, may be implemented under the provisions of Chapter 576 of the 1975 Session Laws."

§ 160A-25. Referendum on question of extension.

Local Modification. — Pamlico County: 1977, c. 478, s. 2.

Cited in Armento v. City of Fayetteville, 32 N.C. App. 256, 231 S.E.2d 689 (1977).

§ 160A-28. Ballots; effect of majority vote for extension. — At such election those qualified voters who present themselves to the election officials at the respective voting places shall be furnished with ballots upon which shall be written or printed the words "For Extension" and "Against Extension." If at such election a majority of the votes cast from the area proposed for annexation shall be "For Extension," and, in the event an election is held in the municipality, the majority of the votes cast in the municipality shall also be "For Extension," then from and after the date of the declaration of the result of such election the territory and its citizens and property shall be subject to all the debts, laws, ordinances, and regulations in force in said city or town and shall be entitled to the same privileges and benefits as other parts of said city or town. Real and

personal property in the newly annexed territory on the January 1 immediately preceding the begining of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. (1947, c. 725, s. 5; 1973, c. 426, s. 74; 1977, c. 517, s. 3.)

Editor's Note. — The 1977 amendment rewrote the third sentence, which formerly read "The newly elected territory shall be subject to city taxes levied for the fiscal year following the date of annexation."

§ 160A-31. Annexation by petition.

(e) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(1977, c. 517, s. 4.)

Editor's Note. —

The 1977 amendment, in subsection (e), substituted the present second sentence for the former second through sixth sentences, which pertained to the liability of a territory for municipal taxes for the fiscal year in which it was annexed.

Session Laws 1977, c. 517, s. 10, provides: "If an annexation became or becomes effective after December 31, 1975, and before July 1, 1977, and newly annexed property was or is taxed under the procedures of G.S. 160A-24, G.S. 160A-31(e), G.S. 160A-37(f), G.S. 160A-49(f), or G.S. 160A-58.3, as those sections read immediately before the effective date of Chapter 576 of the 1975 Session Laws, that method of taxation is hereby validated. No person may be held liable under G.S. 105-380 or any other statute because those procedures were followed rather than the procedures established by Chapter 576 of the 1975 Session Laws."

Session Laws 1977, c. 517, s. 11, provides: "This act becomes effective upon ratification. However, any annexation already adopted on or before July 3, 1977, may be implemented under the provisions of Chapter 576 of the 1975 Session Laws."

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

Part 2. Annexation by Cities of Less than 5,000.

§ 160A-37. Procedure for annexation.

(f) Effect of Annexation Ordinance. — From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(1977, c. 517, s. 5.)

Editor's Note. — The 1977 amendment, in subsection (f), substituted the present second sentence for the former second through fifth sentences, which pertained to the liability of a territory for municipal taxes for the fiscal year in which it was annexed.

Session Laws 1977, c. 517, s. 10, provides: "If an annexation became or becomes effective after December 31, 1975, and before July 1, 1977, and newly annexed property was or is taxed under the procedures of G.S. 160A-24, G.S. 160A-31(e), G.S. 160A-37(f), G.S. 160A-49(f), or G.S. 160A-58.3, as those sections read immediately before the effective date of Chapter 576 of the 1975 Session Laws, that method of taxation is hereby validated. No person may be held liable under G.S. 105-380 or any other statute because those procedures were followed rather than the procedures established by Chapter 576 of the 1975 Session Laws."

Session Laws 1977, c. 517, s. 11, provides: "This act becomes effective upon ratification. However, any annexation already adopted on or before July 3, 1977, may be implemented under the provisions of Chapter 576 of the 1975 Session Laws."

As the rest of the section was not changed by the amendment, only subsection (f) is set out.

§ 160A-38. Appeal.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the Court of Appeals; provided, that the superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the superior court, Court of Appeals or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. (1959, c. 101, s. 6; 1973, c. 426, s. 74; 1977, c. 148, ss. 6, 7.)

Editor's Note. — The 1977 amendment substituted "Court of Appeals" for "Supreme Court" in two places in subsection (h) and substituted "superior court, Court of Appeals or Supreme Court" for "superior or Supreme Court" in two places in subsection (i).

As the rest of the section was not changed by the amendment, only subsections (h) and (i) are set out.

Applied in Taylor v. City of Raleigh, 290 N.C. 608, 227 S.E.2d 576 (1976).

§ 160A-44. Counties excepted from Part; Part 1 continued for such counties. — The provisions of this Part shall not apply to the following counties: Alleghany, Edgecombe, Halifax, Iredell, Nash, except for the towns of Nashville, Spring Hope, Castalia and Middlesex, Pender, Perquimans and Person, provided the provisions of this Part shall apply to the towns of Whitakers, Sharpsburg, and Battleboro in Edgecombe and Nash Counties. This Part shall not apply to the town of King in Stokes County, nor to the town of Pilot Mountain in Surry County. No territory located in Brunswick County may be annexed under the provisions of this Part. No territory in Pamlico County may be annexed under the provisions of this Part by any town or city with a population of 1,000 or less according to the most recent federal decennial census.

Notwithstanding any other provisions of this Part, Part 1 of Article 36 of Chapter 160 [Part 1 of Article 4A of Chapter 160A] of the General Statutes of

North Carolina and specifically G.S. 160A-31 as the same may be rewritten or amended, shall remain in full force and effect as to the counties herein named. (1959, c. 101, s. 12; 1961, c. 1081; 1965, cc. 782, 875; 1967, c. 156, s. 1; 1969, c. 438, s. 1; c. 1232; 1971, c. 28; 1973, c. 426, s. 74; 1975, c. 290, s. 1; 1977, c. 27, s. 1; c. 478, s. 1.)

Editor's Note. —

The first 1977 amendment deleted, at the end of the third sentence of the first paragraph, "by any city with a population, according to the most recent federal census, of less than 2,000."

The second 1977 amendment added the third sentence of the first paragraph.

Session Laws 1977, c. 27, s. 2, provides: "This act shall become effective upon ratification, but it shall not affect annexations presently in progress." The act was ratified Feb. 24, 1977.

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-45. Declaration of policy.

Compliance Condition Precedent to Annexation. — Prima facie complete and substantial compliance with this Part is a condition precedent to annexation of territory by a municipality. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Cited in Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

City Need Not Duplicate Available Services. — There is no requirement that a municipality duplicate services, in an area to be annexed, which are already available in the area. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Annexing City Has 12-15 Months to Implement Extension of Services. — It would appear from a reading of § 160A-49(h) that a city annexing territory has one year — possibly 15 months — to implement its plan for extending services to an annexed area. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Therefore, Funds Need Not Be Immediately Budgeted. — Since subdivision (3) of this section requires only that the annexing city file a statement showing how it will provide and finance municipal services to the annexed area, and since there is no requirement that available services be duplicated, the City of Goldsboro, in annexing a federal air force base, was not required to have funds budgeted at the time of trial to provide municipal services to the base in the event the federal government ceased providing those services, where the plan of annexation was based upon sound estimates of anticipated expenditures and revenues. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Applied in Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

Cited in Armento v. City of Fayetteville, 32 N.C. App. 256, 231 S.E.2d 689 (1977).

§ 160A-48. Character of area to be annexed.

Tests as to Urban Development, etc. —

The tests to determine whether an area is developed for urban purposes must be applied to the annexation area as a whole. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Counting "Total Resident Population". —

A person is properly counted as a member of the "total resident population" under this section if such person would have been counted as an inhabitant of the proposed area of annexation under rules governing the last preceding decennial census. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Finding of Domicile Not Required. —

The annexing unit is not required to make a finding that a person is actually domiciled within the proposed area of annexation before counting that person for the purpose of making the population estimate required by this section. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Military Personnel Properly Counted in Estimating Annexed Population. — In an annexation proceeding the military personnel on

an air force base in the area to be annexed were properly counted in determining the population estimate required by this section since in accordance with census practice dating back to 1790 persons enumerated in the 1970 census who lived on military bases as members of the armed forces were counted as residents of the states, counties, and minor civil divisions in which their installations were located. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

A federal air force base was subject to annexation by the City of Goldsboro where the annexation was not for the sole purpose of generating revenue, and it did not interfere with federal jurisdiction. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

The annexation of a federal air force base by the City of Goldsboro did not create unconstitutional tax classes. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Cited in Armento v. City of Fayetteville, 32 N.C. App. 256, 231 S.E.2d 689 (1977).

§ 160A-49. Procedure for annexation.

(f) Effect of Annexation Ordinance. — From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. Provided that annexed property which is a part of a sanitary district, which has installed water and sewer lines, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five years after the effective date of annexation. If this proviso should be declared by a court of competent jurisdiction to be in violation of any provision of the federal or State Constitution, the same shall not affect the remaining provisions of this Part. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinances from and after the effective date of annexation.

(1977, c. 517, s. 6.)

Local Modification. — City of Raleigh: 1977, c. 351.

Editor's Note. —

The 1977 amendment, in subsection (f), substituted the present second sentence for the former second through fifth sentences, which pertained to the liability of a territory for municipal taxes for the fiscal year in which it was annexed, and deleted the former eighth sentence, which provided for the municipality's obtaining from the county from which the annexed area was taken property tax listing records for purposes of levying taxes.

As the rest of the section was not changed by the amendment, only subsection (f) is set out.

Session Laws 1977, c. 517, s. 10, provides: "If an annexation became or becomes effective after December 31, 1975, and before July 1, 1977, and newly annexed property was or is taxed under the procedures of G.S. 160A-24, G.S. 160A-31(e), G.S. 160A-37(f), G.S. 160A-49(f), or G.S. 160A-58.3, as those sections read immediately before the effective date of Chapter 576 of the 1975 Session Laws, that method of taxation is hereby validated. No person may be held liable under G.S. 105-380 or any other statute because those procedures were followed rather than the procedures established by Chapter 576 of the 1975 Session Laws."

Session Laws 1977, c. 517, s. 11, provides: "This act becomes effective upon ratification. However, any annexation already adopted on or before July 3, 1977, may be implemented under the provisions of Chapter 576 of the 1975 Session Laws."

For a survey of 1977 law on property, see 56 N.C.L. Rev. 1111 (1978).

The purpose of subsection (a) requiring the resolution stating the intent to consider annexation is to record the town board's decision and to mark the formal beginning of the muncipality's actions. This resolution expresses the intent of the governing board and it has little significance to the public. Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

Subsection (a) does not specifically require a written resolution nor is such a requirement implicit in the fact that the resolution must describe the land under consideration. Kritzer v.

Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

The right of the general public to sufficient notice of the proposed annexation is protected by subsections (b) and (e). Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

The notice of the public hearing must be published in a newspaper, or by other means, and must contain a clear description of the land under consideration. Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

By virtue of subsection (e) the governing board is prohibited from annexing any land except that described in the notice of the public hearing. Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

Annexing City Has 12-15 Months to Implement Extension of Services. — It would appear from a reading of § 160A-49(h) that a city annexing territory has one year — possibly 15 months — to implement its plan for extending services to an annexed area. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Cited in Armento v. City of Fayetteville, 32 N.C. App. 256, 231 S.E.2d 689 (1977).

§ 160A-50. Appeal.

Which Puts Burden, etc. —

The party challenging the annexation has the burden of showing error. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Applied in Taylor v. City of Raleigh, 290 N.C. 608, 227 S.E.2d 576 (1976).

Cited in Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

§ 160A-54. Population and land estimates.

Tests as to Urban Development Must Be Applied to Whole Annexation Area. — The tests to determine whether an area is developed for urban purposes must be applied to the annexation area as a whole. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

§ 160A-56. Counties excepted from Part; Part 1 continued for such counties.

Amendment Subject to Referendum to Be Held in November, 1978. — Session Laws 1977, c. 455, s. 2, amends this section by deleting "Halifax" in the first sentence of the first paragraph.

Session Laws 1977, c. 455, s. 2, makes the amendment subject to a vote of the people of Roanoke Rapids Township at a referendum to be held in November 1978, and Session Laws 1977, c. 455, s. 3, provides that the city council of the City of Roanoke Rapids may cancel the election so provided for by the adoption of a resolution during the month of June, 1978, and that if such a resolution is adopted and notice thereof transmitted then the amendment shall be null and void.

Part 4. Annexation of Noncontiguous Areas.

§ 160A-58. Definitions.

Cited in Taylor v. City of Raleigh, 290 N.C. 608, 227 S.E.2d 576 (1976).

§ 160A-58.2. Public hearing.

Stated in Taylor v. City of Raleigh, 290 N.C. 608, 227 S.E.2d 576 (1976).

§ 160A-58.3. Annexed area subject to city taxes and debts. — From and after the effective date of the annexation ordinance, the annexed area and its citizens and property are subject to all debts, laws, ordinances and regulations of the annexing city, and are entitled to the same privileges and benefits as other parts of the city. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the privilege licenses of the annexing city are due on June 1, then businesses in the annexed area are liable for privilege license taxes at the full-year rate. (1973, c. 1173, s. 2; 1975, c. 576, s. 5; 1977, c. 517, s. 7.)

Editor's Note. —

The 1977 amendment substituted the present second sentence for the former second through sixth sentences, which pertained to the liability of a territory for municipal taxes for the fiscal year in which it was annexed.

Session Laws 1977, c. 517, s. 10, provides: "If an annexation became or becomes effective after December 31, 1975, and before July 1, 1977, and newly annexed property was or is taxed under the procedures of G.S. 160A-24, G.S. 160A-31(e), G.S. 160A-37(f), G.S. 160A-49(f), or G.S. 160A-58.3, as those sections read immediately before the effective date of Chapter 576 of the 1975 Session Laws, that method of taxation is hereby validated. No person may be held liable under G.S. 105-380 or any other statute because those procedures were followed rather than the procedures established by Chapter 576 of the 1975 Session Laws."

Session Laws 1977, c. 517, s. 11, provides: "This act becomes effective upon ratification. However, any annexation already adopted on or before July 3, 1977, may be implemented under the provisions of Chapter 576 of the 1975 Session Laws."

§§ 160A-58.7 to 160A-58.9: Reserved for future codification purposes.

Part 5. Property Tax Liability of Newly Annexed Territory.

§ 160A-58.10. Tax of newly annexed territory. — (a) Applicability of Section. — Real and personal property in territory annexed pursuant to this Article is subject to municipal taxes as provided in this section.

(b) Prorated Taxes. — Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to prorated municipal taxes levied for that fiscal year as provided in this subsection. The amount of municipal taxes that would have been due on the property had it been within the municipality for the full fiscal year shall be multiplied by the following fraction: the denominator shall be 12 and the numerator shall be the number of full calender months remaining in the fiscal year, following the day on which the annexation becomes effective. The product of the multiplication is the amount of prorated taxes due. The lien for prorated taxes levied on a parcel of real property shall attach to the parcel taxed on the listing date, as provided in G.S. 105-285, immediately preceding the fiscal year in which the annexation becomes effective. The lien for prorated taxes levied on personal property shall attach on the same date to all real property of the taxpayer in the taxing unit, including the newly annexed territory. If the annexation becomes effective after June 30 and before September 2, the prorated taxes shall be due and payable on the first day of September of the fiscal year for which the taxes are levied. If the annexation becomes effective after September 1 and before the following July 1, the prorated taxes shall be due and payable on the first day of September of the next succeeding fiscal year. The prorated taxes are subject to collection and foreclosure in the same manner as other taxes levied for the fiscal year in which the prorated taxes become due.

(c) Taxes in Subsequent Fiscal Years. — In fiscal years subsequent to the fiscal year in which an annexation becomes effective, real and personal property in the newly annexed territory is subject to municipal taxes on the same basis as is the preexisting territory of the municipality.

(d) Transfer of Tax Records. — For purposes of levying prorated taxes the municipality shall obtain from the county a record of property in the area being annexed that was listed for taxation on the January 1 immediately preceding the fiscal year for which the prorated taxes are levied. In addition, if the effective date of annexation falls between January 1 and June 30, the municipality shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed that was listed for taxation as of said January 1. (1977, c. 517, s. 9.)

Editor's Note. — Session Laws 1977, c. 517, s. 10, provides: "If an annexation became or becomes effective after December 31, 1975, and before July 1, 1977, and newly annexed property was or is taxed under the procedures of G.S. 160A-24, G.S. 160A-31(e), G.S. 160A-37(f), G.S. 160A-49(f), or G.S. 160A-58.3, as those sections read immediately before the effective date of Chapter 576 of the 1975 Session Laws, that method of taxation is hereby validated. No person may be held liable under G.S. 105-380 or any other statute because those procedures were followed rather than the procedures established by Chapter 576 of the 1975 Session Laws."

Session Laws 1977, c. 517, s. 11, provides: "This act becomes effective upon ratification. However, any annexation already adopted on or before July 3, 1977, may be implemented under the provisions of Chapter 576 of the 1975 Session Laws."

ARTICLE 5.

Form of Government.

Part 3. Organization and Procedures of the Council.

§ 160A-68. Organizational meeting of council. — (a) The council may fix the date and time of its organizational meeting. The organizational meeting may be held at any time after the results of the municipal election have been officially determined and published pursuant to Subchapter IX of Chapter 163 of the General Statutes but not later than the date and time of the first regular meeting of the council in December after the results of the municipal election have been certified pursuant to that Subchapter. If the council fails to fix the date and time of its organizational meeting, then the meeting shall be held on the date and at the time of the first regular meeting in December after the results of the municipal election have been certified pursuant to Subchapter IX of Chapter 163 of the General Statutes.

(b) At the organizational meeting, the newly elected mayor and councilmen shall qualify by taking the oath of office prescribed in Article VI, Section 7 of the Constitution. The organization of the council shall take place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, but at least a quorum of the members must be present. (1971, c. 698, s. 1; 1973, c. 426, s. 13; c. 607; 1979, c. 168.)

Editor's Note. — The 1979 amendment designated the former second and third sentences of this section as subsection (b), added subsection (a), and deleted the former first sentence of the section, which read: "The organizational meeting of the council shall be held on the date and at the time of the first regular meeting in December after the results of the election have been certified pursuant to Subchapter IX of Chapter 163 of the General Statutes."

§ 160A-71. Regular and special meetings; procedure.

(b) The mayor, the mayor pro tempore, or any two members of the council may at any time call a special council meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. The notice shall be delivered to the mayor and each councilman or left at his usual dwelling place at least six hours before the meeting. Special meetings may be held at any time when the mayor and all members of the council are present and consent thereto, or when those not present have signed a written waiver of notice. Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or have signed a written waiver of notice. In addition to the procedures set out in this subsection or any city charter, a person or persons calling a special meeting of a city council shall comply with the notice requirements of Article 33B of General Statutes Chapter 143.

(1977, 2nd Sess., c. 1191, s. 7.)

Editor's Note. — The 1977, 2nd Sess., amendment, effective Oct. 1, 1978, added the last sentence of subsection (b).

As subsections (a) and (c) were not changed by the amendment, they are not set out.

§ 160A-77. Code of ordinances.

Applied in Johnson v. Town of Longview, 37 N.C. App. 61, 245 S.E.2d 516 (1978).

Cited in In re Jacobs, 33 N.C. App. 195, 234 S.E.2d 639 (1977).

§ 160A-78. Ordinance book.

Applied in Johnson v. Town of Longview, 37 N.C. App. 61, 245 S.E.2d 516 (1978).

§ 160A-79. Pleading and proving city ordinances.

Applied in In re Jacobs, 33 N.C. App. 195, 234 S.E.2d 639 (1977).

Cited in Johnson v. Town of Longview, 37 N.C. App. 61, 245 S.E.2d 516 (1978).

ARTICLE 7.

Administrative Offices.

Part 4. Personnel.

§ 160A-163. Retirement benefits.

Local Modification. — By virtue of Session Laws 1979, c. 341, City of Lincolnton should be stricken from the replacement volume.

§ 160A-164. Personnel rules. — The council may adopt or provide for rules and regulations or ordinances concerning but not limited to annual leave, sick leave, special leave with full pay or with partial pay supplementing workers' compensation payments for employees injured in accidents arising out of and in the course of employment, hours of employment, holidays, working conditions, service award and incentive award programs, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent, and

honest career employees. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C. S., s. 2787; 1965, c. 931; 1971, c. 698, s. 1; 1979, c. 714, s. 2.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "workers' " for "workmen's" near the beginning of the section.

§ 160A-167. Defense of employees and officers; payment of judgments. — (a) Upon request made by or in behalf of any employee or officer, or former employee or officer, or any member of a volunteer fire department or rescue squad which receives public funds, any city, county or county alcoholic beverage control board may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as an employee or officer of the city, county or county alcoholic beverage control board. The defense may be provided by the city, county or county alcoholic beverage control board by its own counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense. Providing for a defense pursuant to this section is hereby declared to be for a public purpose, and the expenditure of funds therefor is hereby declared to be a necessary expense. Nothing in this section shall be deemed to require any city, county or county alcoholic beverage control board to provide for the defense of any action or proceeding of any nature.

(b) Any city council or board of county commissioners may appropriate funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its employees or officers, or former employees or officers, when such claim is made or such judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as an employee or officer of the city or county; provided, however, that nothing in this section shall authorize any city or county to appropriate funds for the purpose of paying any claim made or civil judgment entered against any of its employees or officers or former employees or officers if the city council or board of county commissioners finds that such employee or officer acted or failed to act because of actual fraud, corruption or actual malice on his part. Any city or county may purchase insurance coverage for payment of claims or judgments pursuant to this section. Nothing in this section shall be deemed to require any city or county to pay any claim or judgment referred to herein, and the purchase of insurance coverage for payment of any such claim or judgment shall not be deemed an assumption of any liability not covered by such insurance contract, and shall not be deemed an assumption of liability for payment of any claim or judgment in excess of the limits of coverage in such insurance contract.

(c) Subsection (b) shall not authorize any city or county to pay all or part of a claim made or civil judgment entered unless (1) notice of the claim or litigation is given to the city council or board of county commissioners prior to the time that the claim is settled or civil judgment is entered, and (2) the city council or board of county commissioners shall have adopted, and made available for public inspection, uniform standards under which claims made or civil judgments entered against employees or officers, or former employees or officers, shall be paid. (1967, c. 1093; 1971, c. 698, s. 1; 1973, c. 426, s. 23; c. 1450; 1977, c. 307, s. 2; c. 834, s. 1.)

Editor's Note. — The first 1977 amendment inserted "or any member of a volunteer fire department or rescue squad which receives public funds" near the beginning of the first sentence.

The second 1977 amendment designated the former provisions of this section as subsection (a) and added subsections (b) and (c).

ARTICLE 8.

Delegation and Exercise of the General Police Power.

§ 160A-174. General ordinance-making power.

Editor's Note. —
For article, "Regulating Obscenity Through the Power to Define and Abate Nuisances," see 14 Wake Forest L. Rev. 1 (1978).

Cited in U.T., Inc. v. Brown, 457 F. Supp. 163 (W.D.N.C. 1978).

§ 160A-175. Enforcement of ordinances.

The procedure for abatement orders in subsection (e) of this section is constitutionally defective and may not be used in enforcing the substantive provisions of a city ordinance. U.T., Inc. v. Brown, 457 F. Supp. 163 (W.D.N.C. 1978).

The procedural provisions of a city ordinance regulating commercial exploitation of obscenity which provided for civil penalties for violation, and authorized the city manager to issue a citation to the violator describing the violation and assessing the penalty, and to include in the citation notice that the city manager would instruct the city attorney to commence suit under subsection (c) of this section if the penalty was not paid in five days, was unconstitutional. U.T., Inc. v. Brown, 457 F. Supp. 163 (W.D.N.C. 1978).

§ 160A-178. Regulation of solicitation campaigns and itinerant merchants.

Ordinance Enacted under Authority of Section Held Unconstitutional as Applied to Unincorporated Association Formed for Exerting Political Influence on State Level. — See Carolina Action v. Pickard, 420 F. Supp. 310 (W.D.N.C. 1976).

Quoted in Carolina Action v. Pickard, 465 F. Supp. 576 (W.D.N.C. 1979).

§ 160A-187. Possession or harboring of dangerous animals. — A city may by ordinance regulate, restrict, or prohibit the possession or harboring within the city of animals which are dangerous to persons or property. No such ordinance shall have the effect of permitting any activity or condition with respect to a wild animal which is prohibited or more severely restricted by regulations of the Wildlife Resources Commission. (1971, c. 698, s. 1; 1977, c. 407, s. 2.)

Cross Reference. — As to the power of counties to regulate, restrict, or prohibit the possession or harboring of dangerous animals, see § 153A-131.

Editor's Note. — The 1977 amendment substituted "animals which are" for "wild animals" in the first sentence, deleted "or offensive to senses" from the end of the first sentence, and added the second sentence.

§ 160A-188. Bird sanctuaries.

Amendment Effective July 1, 1980. — Session Laws 1979, c. 830, s. 3, effective July 1, 1980, will amend this section to read as follows:

"160A-188. Bird sanctuaries. — A city may by ordinance create and establish a bird sanctuary within the city limits. The ordinance may not protect any birds classed as a pest under Article 22A of Chapter 113 of the General Statutes and the Structural Pest Control Act of North Carolina of 1955 or the North Carolina

Pesticide Law of 1971. When a bird sanctuary has been established, it shall be unlawful for any person to hunt, kill, trap, or otherwise take any protected birds within the city limits except pursuant to a permit issued by the North Carolina Wildlife Resources Commission under G.S. 113-274(c)(1a) or under any other license or permit of the Wildlife Resources Commission specifically made valid for use in taking birds within city limits."

ARTICLE 9.

Taxation.

§ 160A-206. General power to impose taxes.

Applied in Cooke v. Futrell, 37 N.C. App. 441, 246 S.E.2d 65 (1978).

§ 160A-209. Property taxes.

(c) Each city may levy property taxes for one or more of the following purposes subject to the rate limitation set out in subsection (d):

(1) Administration. — To provide for the general administration of the city through the city council, the office of the city manager, the office of the city budget officer, the office of the city finance officer, the office of the city tax collector, the city purchasing agent, the city attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity.

(2) Air Pollution. — To maintain and administer air pollution control programs.

(3) Airports. — To establish and maintain airports and related aeronautical facilities.

(4) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.

(5) Animal Protection and Control. — To provide animal protection and control programs.

(6) Auditoriums, Coliseums, and Convention Centers. — To provide public auditoriums, coliseums, and convention centers.

(7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control and flood and hurricane protection.

(8) Cemeteries. — To provide for cemeteries.

(9) Civil Defense. — To provide for civil defense programs.

(10) Debts and Judgments. — To pay and discharge any valid debt of the city or any judgment lodged against it, other than debts or judgments evidenced by or based on bonds or notes.

(10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.

(11) Elections. — To provide for all city elections and referendums.

(12) Electric Power. — To provide electric power generation, transmission, and distribution services.

(13) Fire Protection. — To provide fire protection services and fire prevention programs.

(14) Gas. — To provide natural gas transmission and distribution services.

(15) Historic Preservation. — To undertake historic preservation programs and projects.

(16) Human Relations. — To undertake human relations programs.

(17) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facilities, and to aid any private, nonprofit hospital, clinic, related facility, or other health program or facility.

(18) Jails. — To provide for the operation of a jail and other local confinement facilities.
(19) Joint Undertakings. — To cooperate with any other county, city, or political subdivision of the State in providing any of the functions, services, or activities listed in this subsection.
(20) Libraries. — To establish and maintain public libraries.
(21) Mosquito Control.
(22) Off-Street Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.
(23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, of this Chapter.
(24) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.
(25) Planning. — To provide for a program of planning and regulation of development in accordance with Article 19 of this Chapter.
(26) Police. — To provide for law enforcement.
(27) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and to provide for harbor masters.
(27a) Senior Citizens Programs. — To undertake programs for the assistance and care of its senior citizens.
(28) Sewage. — To provide sewage collection and treatment services as defined in G.S. 160A-311(3).
(29) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.
(30) Streets. — To provide for the public streets, sidewalks, and bridges of the city.
(31) Traffic Control and On-Street Parking. — To provide for the regulation of vehicular and pedestrian traffic within the city, and for the parking of motor vehicles on the public streets.
(32) Water. — To provide water supply and distribution services.
(33) Water Resources. — To participate in federal water resources development projects.
(34) Watershed Improvement. — To undertake watershed improvement projects.

(1977, c. 187, s. 2; c. 834, s. 2; 1979, c. 619, s. 5.)

Editor's Note. —
The first 1977 amendment added subdivision (27a) to subsection (c).
The second 1977 amendment added subdivision (10a) to subsection (c).
The 1979 amendment added "as defined in G.S. 160A-311(3)" at the end of subdivision (28) of subsection (c).
As the rest of the section was not changed by the amendments, only subsection (c) is set out.

§ 160A-213. Motor vehicle taxes. — (a) A city may impose an annual license tax on motor vehicles as permitted by G.S. 20-97.

(b) By ordinance a city may provide that the annual license tax imposed under subsection (a) above may be waived for individuals serving as firemen or as members of emergency medical teams. A city may also provide such individuals with tags or decals with distinctive coloring, or other means, to identify the individual as a fireman or a member of an emergency medical team. (1971, c. 698, s. 1; 1979, c. 442.)

Editor's Note. — The 1979 amendment designated the former section as subsection (a), and added subsection (b).

ARTICLE 10.

Special Assessments.

§ 160A-216. Authority to make special assessments. — Any city is authorized to make special assessments against benefited property within its corporate limits for:

(4) Constructing, reconstructing, extending, or otherwise building or improving sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;

(1979, c. 619, s. 12.)

Editor's Note. —

The 1979 amendment substituted "or" for "and" after "extending" near the beginning of subdivision (4), inserted "collection and" near the middle of subdivision (4), and added "of all types, including septic tank systems or other on-site collection or disposal facilities or systems" at the end of subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (4) are set out.

§ 160A-233. Enforcement of assessments; interests; foreclosure; limitations.

Local Modification. — Forsyth: 1977, c. 203.

§ 160A-234. Assessments on property held by tenancy for life or years. — (a) Assessments upon real property in the possession or enjoyment of a tenant for life, or a tenant for a term of years, shall be paid in accordance with G.S. 37-36(b).

(b) Repealed by Session Laws 1979, c. 107, s. 12. (1911, c. 7, ss. 1, 2, 3; C.S., ss. 2718, 2719, 2720; 1971, c. 698, s. 1; 1979, c. 107, s. 12.)

Editor's Note. —

The 1979 amendment substituted "in accordance with G.S. 37-36(b)" for "pro rata by the tenant and the remaindermen after the life estate, or the owner in fee after the expiration of the tenancy for years according to their respective interests in the land calculated as provided in G.S. 37-13" in subsection (a), and deleted subsection (b), which provided for a right of contribution in any tenant for life or years who had paid more than his pro rata share of any assessment.

§ 160A-238. Authority to make assessments for beach erosion control and flood and hurricane protection works.

Local Modification. — Town of Holden Beach: 1979, c. 440.

ARTICLE 11.

Eminent Domain.

§ 160A-241. Power of eminent domain conferred. — In addition to powers conferred by any other general law, charter, or local act, each city shall possess the power of eminent domain and may acquire by purchase or condemnation any property, either inside or outside the corporate limits, for the following purposes:

(1) Opening, widening, extending, or improving streets, alleys, sidewalks, and public wharves.
(2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311.
(3) Establishing or enlarging parks, playgrounds, and other recreational facilities.
(4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works.
(5) Establishing, enlarging, or improving cemeteries.
(6) Constructing, enlarging, or improving city halls, fire stations, office buildings, and other buildings for use by any city department.
(7) Acquiring designated historic properties, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3.

The power to acquire property by condemnation shall not depend on any prior effort to acquire the same property by grant or purchase, nor shall the power to negotiate for the grant or purchase of property be impaired by initiation of condemnation proceedings for acquisition of the same property.

In exercising the power of eminent domain, a city may in its discretion use the procedures of Article 2 of Chapter 40 of the General Statutes, or the procedures of this Article, or the procedures of any other general law, charter, or local act applicable to the city. (1917, c. 136, subch. 4, s. 1; 1919, c. 262; C.S., ss. 2791, 2792; 1923, c. 181; 1961, c. 982; 1971, c. 698, s. 1; 1973, c. 426, s. 36; 1979, c. 789, s. 1.)

Local Modification. — City of Statesville: 1977, c. 56; 1979, c. 337.

Editor's Note. —

The 1979 amendment added subdivision (7).

For note discussing constitutional challenges to Laws 1967, ch. 506 and "quick take" condemnation proceedings, see 8 N.C. Central L.J. 289 (1977).

Stated in Orange Water & Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486 (1977).

§ 160A-263. Right of entry prior to condemnation.

Quoted in Orange Water & Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486 (1977).

ARTICLE 12.

Sale and Disposition of Property.

§ 160A-266. Methods of sale; limitation.

Local Modification. — Macon: 1979, c. 235; Pasquotank: 1979, c. 129; city of Asheville: 1979, c. 317; city of Elizabeth City: 1979, c. 129.

§ 160A-272. Lease or rental of property.

Local Modification. — Wake: 1979, c. 275; city of Charlotte: 1979, c. 446; town of Beaufort: 1979, c. 371.

§ 160A-274. Sale, lease, exchange and joint use of governmental property. (c) Action under this section shall be taken by the governing body of the governmental unit. Action hereunder by any State agency, except the Department of Transportation, shall be taken only after approval by the Department of Administration. Action with regard to State property under the control of the Department of Transportation shall be taken by the Department of Transportation or its duly authorized delegate. Provided, any county board of education or board of education for any city administrative unit may, upon such terms and conditions as it deems wise, lease to another governmental unit for one dollar ($1.00) per year any real property owned or held by the board which has been determined by the board to be unnecessary or undesirable for public school purposes. (1969, c. 806; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1975, c. 455; c. 664, s. 9; c. 879, s. 46; 1977, c. 464, s. 34.)

Local Modification. — New Hanover: 1977, c. 97.

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in three places in subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 160A-277. Sale of land to volunteer fire departments and rescue squads; procedure. — (a) A city, upon such terms and conditions as it deems wise, with or without monetary consideration may lease, sell or convey to a volunteer fire department or to a volunteer rescue squad any land or interest in land, for the purpose of constructing or expanding fire department or rescue squad facilities, if the volunteer fire department or volunteer rescue squad provides fire protection or rescue services to the city.

(b) Any lease, sale or conveyance under this section must be approved by the city council by resolution adopted at a regular meeting of the council upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or sold, stating the value of the properties, the proposed monetary consideration or lack thereof, and the council's intent to authorize the lease, sale or conveyance. (1979, c. 583.)

§§ 160A-278 to 160A-280: Reserved for future codification purposes.

Article 13.

Law Enforcement.

§ 160A-282. Auxiliary law-enforcement personnel; workers' compensation benefits. — (a) A city, by enactment of an ordinance, may provide that, while undergoing official training and while performing duties on behalf of the city pursuant to orders or instructions of the chief of police of the city, auxiliary law-enforcement personnel shall be entitled to benefits under the North Carolina Workers' Compensation Act and to any fringe benefits for which such volunteer personnel qualify.

(b) The board of commissioners of any county may provide that persons who are deputized by the sheriff of the county as special deputy sheriffs or persons who are serving as volunteer law-enforcement officers at the request of the sheriff and under his authority, while undergoing official training and while performing duties on behalf of the county pursuant to orders or instructions of the sheriff, shall be entitled to benefits under the North Carolina Workers' Compensation Act and to any fringe benefits for which such persons qualify. (1969, c. 206, s. 1; 1971, c. 698, s. 1; 1973, c. 1263, s. 1; 1979, c. 714, s. 2.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "Workers' " for "Workmen's" near the end of subsections (a) and (b).

§ 160A-283. Joint county and city auxiliary police. — The governing body of any city, town, or county is hereby authorized to create and establish a joint law-enforcement officers' auxiliary force with one or more cities, towns, or counties. Each participating city, town, or county shall, by resolution or ordinance, establish the joint auxiliary police force. The resolution or ordinance shall specify whether the members of the joint auxiliary police force shall be volunteers or shall be paid. Members shall be appointed by the respective governmental units and shall take the oath required for regular police officers. The joint auxiliary force may be called into active service at any time by the mayor or chief of police of the participating town or city or the chairman of the board of commissioners or sheriff of a participating county. Members of the joint auxiliary force, while undergoing official training and while on active duty shall be members of the unit which called the auxiliary force into active duty and shall be entitled to all powers, privileges and immunities afforded by law to regularly employed law-enforcement officers of that unit including benefits under the Workers' Compensation Act. Members of the joint auxiliary force shall not be considered as public officers within the meaning of the North Carolina Constitution. Such members shall be dressed in the uniform prescribed by such auxiliary force at any time such members or member exercises any of the duties or authority herein provided for. (1971, c. 607; c. 896, s. 4; 1979, c. 714, s. 2.)

Editor's Note. —
The 1979 amendment, effective July 1, 1979, substituted "Workers' " for "Workmen's" near the end of the sixth sentence.

§ 160A-286. Extraterritorial jurisdiction of policemen.

Cited in State v. Mangum, 30 N.C. App. 311, 226 S.E.2d 852 (1976); State v. Williams, 31 N.C. App. 237, 229 S.E.2d 63 (1976).

§ 160A-288. Cooperation between law-enforcement agencies. — (a) In accordance with rules, policies, or guidelines officially adopted by the governing body of the city or county by which he is employed, and subject to any conditions or restrictions included therein, the head of any law-enforcement agency may temporarily provide assistance to another agency in enforcing the laws of North Carolina if so requested in writing by the head of the requesting agency. The assistance may comprise allowing officers of the agency to work temporarily with officers of the requesting agency (including in an undercover capacity) and lending equipment and supplies. While working with the requesting agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges and immunities as the officers of the requesting agency in addition to those he normally possesses. While on duty with the requesting agency, he shall be subject to the lawful operational commands of his superior officers in the requesting agency, but he shall for personnel and administrative purposes, remain under the control of his own agency, including for purposes of pay. He shall furthermore be entitled to workmen's compensation and the same benefits when acting pursuant to this section to the same extent as though he were functioning within the normal scope of his duties.

(b) As used in this section:

(1) "Head" means any director or chief officer of a law-enforcement agency including the chief of police of a local department, chief of police of county police department, and the sheriff of a county, or an officer of one of the above named agencies to whom the head of that agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.

(2) "Law-enforcement agency" means only a municipal police department, a county police department, or a sheriff's department. All other State and local agencies are exempted from the provisions of this section.

(c) This section in no way reduces the jurisdiction or authority of State law-enforcement officers. (1967, c. 846; 1971, c. 698, s. 1; c. 896, s. 4; 1977, c. 534.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, rewrote this section.

§ 160A-288.1. Assistance by State law-enforcement officers; rules; cost. — (a) The governing body of any city or county may request the Governor to assign temporarily State law-enforcement officers with statewide authority to provide law-enforcement protection when local law-enforcement officers: (i) are engaged in a strike; (ii) are engaged in a slowdown; (iii) otherwise refuse to fulfill their law-enforcement responsibilities; or (iv) submit mass resignations. The request from the governing body of the city or county shall be in writing. The request from a county governing board shall be upon the advice of the sheriff of the county.

(b) The Governor shall formulate such rules, policies or guidelines as may be necessary to establish a plan under which temporary State law-enforcement assistance will be provided to cities and counties. The Governor may delegate the responsibility for developing appropriate rules, policies or guidelines to the head of any State department. The Governor may also delegate to a department head the authority to determine the number of officers to be assigned in a particular case, if any, and the length of time they are to be assigned.

(c) While providing assistance to a city or county, a State law-enforcement officer shall be considered an employee of the State for all purposes, including compensation and fringe benefits.

(d) While providing assistance to the city or county, a State officer shall be subject to the lawful operational commands of his State superior officers. The ranking representative of each State law-enforcement agency providing assistance shall consult with the appropriate city or county officials prior to deployment of the State officers under his command. (1979, c. 639, s. 1.)

ARTICLE 15.

Streets, Traffic and Parking.

§ 160A-296. Establishment and control of streets; center and edge lines. — (a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited to:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper repair;

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary obstructions;
(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent domain;
(4) The power to close any street or alley either permanently or temporarily;
(5) The power to regulate the use of the public streets, sidewalks, alleys, and bridges;
(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the surface;
(7) The power to provide for lighting the streets, alleys, and bridges of the city; and
(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273.

(b) Whenever a municipal street or bridge, or part thereof, is painted or repainted with center lines or edge lines or both, such center lines or edge lines shall be installed and maintained in conformance with the Manual on Uniform Traffic Control Devices for Streets and Highways issued by the United States Department of Transportation, Federal Highway Administration, 1971, or any subsequent revisions thereof approved by the State Department of Transportation. Nothing in this section shall be deemed to require the painting of center lines or edge lines upon any municipal street nor to prohibit the painting of center or edge lines with colors clearly distinguishable from any of the colors specified for use by said manual and any duly approved subsequent revisions. (1917, c. 136, subch. 5, s. 1; subch. 10, s. 1; 1919, cc. 136, 237; C.S., ss. 2787, 2793; 1925, c. 200; 1963, c. 986; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1979, c. 598.)

Editor's Note. —
The 1979 amendment designated the former section as subsection (a), and added subsection (b).

The Duty of Keeping the Streets, etc. —
This section imposes upon the municipality the positive duty to maintain its streets in a reasonably safe condition for travel. Stancill v. City of Washington, 29 N.C. App. 707, 225 S.E.2d 834 (1976).

But Municipality Is Not Insurer, etc. —
While the city is not an insurer of the condition of its streets, this section does subject the defendant city to liability for the negligent failure to maintain its streets in a reasonably safe condition. Stancill v. City of Washington, 29 N.C. App. 707, 225 S.E.2d 834 (1976).

§ 160A-297. Streets under authority of Board of Transportation.

City Is Not Liable for Dangerous Condition It Did Not Create, on State Highway within Its Borders. — When a city street becomes a part of the State highway system, the board of transportation is responsible for its maintenance thereafter which includes the control of all signs and structures within the right-of-way. Therefore, in the absence of any control over a State highway within its border, a municipality has no liability for injuries resulting from a dangerous condition of such street unless it created or increased such condition. Shapiro v. Toyota Motor Co., 38 N.C. App. 658, 248 S.E.2d 868 (1978).

Applied in Dize Awning & Tent Co. v. City of Winston-Salem, 29 N.C. App. 297, 224 S.E.2d 257 (1976).

Cited in Stancill v. City of Washington, 29 N.C. App. 707, 225 S.E.2d 834 (1976).

§ 160A-299. Procedure for permanently closing streets and alleys. — (a) When a city proposes to permanently close any street or public alley, the council

shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located.

(b) Any person aggrieved by the closing of any street or alley including the Department of Transportation if the street or alley is under its authority and control, may appeal the council's order to the General Court of Justice within 30 days after its adoption. The court shall hear the matter de novo, and shall have full jurisdiction to try the issues arising and to order the street or alley closed upon proper findings of fact by the jury. No cause of action or defense founded upon the invalidity of any proceedings taken in closing any street or alley may be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within 30 days after the order is adopted.

(c) Upon the closing of a street or alley in accordance with this section, all right, title, and interest in the right-of-way shall be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the street or alley, and the title of such adjoining landowners, for the width of the abutting land owned by them, shall extend to the centerline of the street or alley.

(d) This section shall apply to any street or public alley that has been irrevocably dedicated to the public, without regard to whether it has actually been opened.

(e) No street or alley under the control of the Department of Transportation may be closed unless the Department of Transportation consents thereto. (1971, c. 698, s. 1; 1973, c. 426, s. 47; c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" throughout the section.

§ 160A-301. Parking.

(d) The governing body of any city may, by ordinance, regulate the stopping, standing, or parking of vehicles in specified areas of any parking areas or driveways of a hospital, shopping center, apartment house, condominium complex, or commercial office complex, or any other privately owned public vehicular area, or prohibit such stopping, standing, or parking during any specified hours, provided the owner or person in general charge of the operation and control of that area requests in writing that such an ordinance be adopted. The owner of a vehicle parked in violation of an ordinance adopted pursuant to this subsection shall be deemed to have appointed any appropriate law-enforcement officer as his agent for the purpose of arranging for the transportation and safe storage of such vehicle. (1917, c. 136, subch. 5, s. 1; 1919,

cc. 136, 237; C.S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1; 1973, c. 426, s. 48; 1979, c. 745, s. 2.)

Editor's Note. —
The 1979 amendment added subsection (d).

As only subsection (d) was changed by the amendment, the rest of the section is not set out.

§ 160A-303. Removal and disposal of junked and abandoned motor vehicles.

Local Modification. — Town of Carrboro: 1979, c. 301; town of Garner: 1979, c. 270.

§ 160A-304. Regulation of taxis.

Subdivision (a)(2) does not prohibit the issuance of taxi operator's permits where the applicant therefor has a prior conviction for possession or sale of intoxicating liquors. Opinion of Attorney General to Mr. Joe Chandler, City Attorney, Elizabethtown, N.C., 47 N.C.A.G. 74 (1977).

ARTICLE 16.

Public Enterprises.

Part 1. General Provisions.

§ 160A-311. Public enterprise defined. — As used in this Article, the term "public enterprise" includes:

(3) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;

(5) Public transportation systems;

(1977, c. 514, s. 2; 1979, c. 619, s. 2.)

Editor's Note. —
The 1977 amendment rewrote subdivision (5), which formerly read "Bus lines and mass transit systems."

The 1979 amendment added "of all types, including septic tank systems or other on-site collection or disposal facilities or systems" at the end of subdivision (3).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (5) are set out.

Applied in Dize Awning & Tent Co. v. City of Winston-Salem, 29 N.C. App. 297, 224 S.E.2d 257 (1976).

Cited in Big Bear of North Carolina, Inc. v. City of High Point, 294 N.C. 262, 240 S.E.2d 422 (1978).

§ 160A-312. Authority to operate public enterprises.

Power But Not Obligation to Provide Garbage Service. — A municipality may provide the service of collecting and removing garbage as an exercise of police powers delegated to it, but a municipality is under no compulsion to provide such service. Big Bear of North Carolina, Inc. v. City of High Point, 294 N.C. 262, 240 S.E.2d 422 (1978).

Rates Charged for Garbage Service. — A municipality which does provide garbage collection services may impose a charge reasonably commensurate with the cost of this service upon the householder or building occupant. Under proper classification, the rates charged need not be uniform and a business may be charged at a rate different from individuals.

Big Bear of North Carolina, Inc. v. City of High Point, 294 N.C. 262, 240 S.E.2d 422 (1978).

Municipality need not provide garbage collection services to one who refuses to pay the charge imposed and may discontinue this service in the event of nonpayment. Big Bear of North Carolina, Inc. v. City of High Point, 294 N.C. 262, 240 S.E.2d 422 (1978).

§ 160A-314. Authority to fix and enforce rates.

Right to Classify Consumers under Reasonable Classifications. — The statutory authority of a city to fix and enforce rates for its services and to classify its customers is not a license to discriminate among customers of essentially the same character and services. Rather, this section must be read as a codification of the general rule that a city has the right to classify consumers under reasonable classifications based upon such factors as the cost of service or any other matter which presents a substantial difference as a ground of distinction. Town of Taylorsville v. Modern Cleaners, 34 N.C. App. 146, 237 S.E.2d 484 (1977).

§ 160A-317. Power to require connections. — A city may require the owners of improved property located within the city limits and upon or within a reasonable distance of any water line or sewer collection line owned and operated by the city to connect his premises with the water or sewer line or both, and may fix charges for the connections. (1917, c. 136, subch. 7, s. 2; C.S., s. 2806; 1971, c. 698, s. 1; 1979, c. 619, s. 14.)

Editor's Note. — The 1979 amendment substituted "line" for "system" after "sewer" near the end of the section.

§ 160A-323. Load management and peak load pricing of electric power. — In addition and supplemental to the powers conferred upon municipalities by the laws of the State and for the purposes of conserving electricity and increasing the economy of operation of municipal electric systems, any municipality owning or operating an electric distribution system, any municipality engaging in a joint project pursuant to Chapter 159B of the General Statutes and any joint agency created pursuant to Chapter 159B of the General Statutes, shall have and may exercise the power and authority:

(1) To investigate, study, develop and place into effect procedures and to investigate, study, develop, purchase, lease, own, operate, maintain, and put into service devices, which will temporarily curtail or cut off certain types of appliances or equipment for short periods of time whenever an unusual peak demand threatens to overload the electric system or economies would result; and

(2) To fix rates and bill customers by a system of nondiscriminatory peak pricing, with incentive rates for off-peak use of electricity charging more for peak periods than for off-peak periods to reflect the higher cost of providing electric service during periods of peak demand on the electric system. (1977, c. 232.)

§§ 160A-324 to 160A-330: Reserved for future codification purposes.

ARTICLE 19.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 160A-360. Territorial jurisdiction. — (a) All of the powers granted by this Article may be exercised by any city within its corporate limits. In addition, any city may exercise these powers within a defined area extending not more than one mile beyond its limits. With the approval of the board or boards of county commissioners with jurisdiction over the area, a city of 10,000 or more population but less than 25,000 may exercise these powers over an area extending not more than two miles beyond its limits and a city of 25,000 or more population may exercise these powers over an area extending not more than three miles beyond its limits. The boundaries of the city's extraterritorial jurisdiction shall be the same for all powers conferred in this Article. No city may exercise extraterritorially any power conferred by this Article that it is not exercising within its corporate limits. In determining the population of a city for the purposes of this Article, the city council and the board of county commissioners may use the most recent annual estimate of population as certified by the Secretary of the North Carolina Department of Administration.

(f) When a city annexes, or a new city is incorporated in, or a city extends its jurisdiction to include, an area that is currently being regulated by the county, the county regulations and powers of enforcement shall remain in effect until (i) the city has adopted such regulations, or (ii) a period of 60 days has elapsed following the annexation, extension or incorporation, whichever is sooner. During this period the city may hold hearings and take any other measures that may be required in order to adopt its regulations for the area.

(f1) When a city relinquishes jurisdiction over an area that it is regulating under this Article to a county, the city regulations and powers of enforcement shall remain in effect until (i) the county has adopted this regulation or (ii) a period of 60 days has elapsed following the action by which the city relinguished jurisdiction, whichever is sooner. During this period the county may hold hearings and take other measures that may be required in order to adopt its regulations for the area.

(1977, ch. 882; c. 912, ss. 2, 4.)

Local Modification. — Pamlico County: 1977, c. 478, s. 3.

Editor's Note. — The first 1977 amendment added the last sentence of subsection (a).

The second 1977 amendment inserted "extension" in the first sentence of subsection (f) and added subsection (f1).

As the rest of the section was not changed by the amendments, only subsections (a), (f) and (f1) are set out.

The obvious purpose of the statutory mandate in subsection (b) requiring that boundaries be defined in terms of geographical features identifiable on the ground is that boundaries be defined, to the extent feasible, so that owners of property outside the city can easily and accurately ascertain whether their property is within the area over which the city exercises its extraterritorial zoning authority. Sellers v. City of Asheville, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

Definiteness in Boundary Descriptions Not Met. — The boundaries of a city's proposed extraterritorial zone failed to meet the degree of definiteness mandated by subsection (b) where the only description merely referred to "the territory beyond the corporate limits for a distance of one mile in all directions," and the map showed the "mile boundary" drawn in sweeping curves. Sellers v. City of Asheville, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

Quoted in Taylor v. City of Raleigh, 290 N.C. 608, 227 S.E.2d 576 (1976).

§ 160A-364. Procedure for adopting or amending ordinances under Article. — Before adopting or amending any ordinance authorized by this Article, the city council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 15 days nor more than 25 days before the date fixed for the hearing. Such period shall be computed in compliance with G.S. 1-594, and shall not be subject to Rule 6(a) of the Rules of Civil Procedure. (1923, c. 250, s. 4; C.S., s. 2776(u); 1927, c. 90; 1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 58; 1977, c. 912, s. 5.)

Editor's Note. — The 1977 amendment added the last sentence.

Notice Must Reveal Nature and Character of Proposed Action. — To be adequate, the notice of public hearing required by this section must fairly and sufficiently apprise those whose rights may be affected of the nature and character of the action proposed. Sellers v. City of Asheville, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

Where none of the notices published pursuant to this section informed the public that the city intended, for the first time in its history, to make its zoning ordinance applicable to property outside its city limits, the notices were not in compliance with this section since they failed adequately to alert owners of property outside the city that their rights might be affected. Sellers v. City of Asheville, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

Part 2. Subdivision Regulation.

§ 160A-371. Subdivision regulation.

Editor's Note. — For comment, "Urban Planning And Land Use Regulation: The Need For Consistency," see 14 Wake Forest L. Rev. 81 (1978).

§ 160A-375. Penalties for transferring lots in unapproved subdivisions. — If a city adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The city may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1977, c. 820, s. 2.)

Editor's Note. — The 1977 amendment rewrote the third sentence.

§ 160A-376. Definition. — For the purpose of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulations;

(1977, c. 912, s. 6.)

Editor's Note. — The 1977 amendment substituted "subdivided and recorded" for "platted" in subdivision (1).

As the other subdivisions were not changed by the amendment, they are not set out.

Part 3. Zoning.

§ 160A-381. Grant of power.

Editor's Note. — For comment entitled "Exclusionary Zoning and a Reluctant Supreme Court" (U.S.), see 13 Wake Forest L. Rev. 107 (1977).

For survey of 1972 case law on spot and contract zoning, see 51 N.C.L. Rev. 1132 (1973).

For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

For comment, "Urban Planning And Land Use Regulation: The Need For Consistency," see 14 Wake Forest L. Rev. 81 (1978).

Power Has Been Delegated to Cities, etc. —

A city has power to zone only as delegated to it by enabling statutes. Sellers v. City of Asheville, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

But Power Is Subject, etc. —

In accord with 7th paragraph in original. See Sellers v. City of Asheville, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

§ 160A-382. Districts.

Editor's Note. — For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

§ 160A-383. Purposes in view.

Editor's Note. — For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

§ 160A-384. Method of procedure.

Editor's Note. — For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

Cited in George v. Town of Edenton, 294 N.C. 679, 242 S.E.2d 877 (1978).

§ 160A-385. Changes. — Zoning regulations and restrictions and zone boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in a proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of the opposite lots, an amendment shall not become effective except by favorable vote of three fourths of all the members of the city council. The foregoing provisions concerning protests shall not be applicable to any

amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise. (1923, c. 250, s. 5; C.S., s. 2776(v); 1959, c. 434, s. 1; 1965, c. 864, s. 1; 1971, c. 698, s. 1; 1977, c. 912, s. 7.)

Editor's Note. — The 1977 amendment added the third sentence.

For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

§ 160A-386. Protest petition; form; requirements; time for filing.

Editor's Note. — For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

§ 160A-387. Planning agency; zoning plan; certification to city council. — In order to exercise the powers conferred by this Part, a city council shall create or designate a planning agency under the provisions of this Article or of a special act of the General Assembly. The planning agency shall prepare a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning agency may hold public hearings in the course of preparing the ordinance. Upon completion, the planning agency shall certify the ordinance to the city council. The city council shall not hold its required public hearing or take action until it has received a certified ordinance from the planning agency. Following its required public hearing, the city council may refer the ordinance back to the planning agency for any further recommendations that the agency may wish to make prior to final action by the city council in adopting, modifying and adopting, or rejecting the ordinance. (1923, c. 250, s. 6; C. S., s. 2776(w); 1967, c. 1208, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1977, c. 912, s. 8.)

Editor's Note. — The 1977 amendment substituted "proposed zoning ordinance" for "zoning plan" and "such ordinance" for "a zoning ordinance" in the second sentence and substituted "ordinance" for "plan" in the third through sixth sentences.

For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

The municipality must designate a planning agency to develop and certify a zoning ordinance. George v. Town of Edenton, 31 N.C. App. 648, 230 S.E.2d 695 (1976), rev'd on other grounds, 294 N.C. 679, 242 S.E.2d 877 (1978).

The planning agency is not a legislative body. In relation to the town council, it functions only in an advisory capacity, and its recommendations are in no way binding on the council. George v. Town of Edenton, 31 N.C. App. 648, 230 S.E.2d 695 (1976), rev'd on other grounds, 294 N.C. 679, 242 S.E.2d 877 (1978).

The statement of the Court of Appeals in George v. Town of Edenton, 31 N.C. App. 648, 230 S.E.2d 695 (1976), that the procedure in this section is a prerequisite only to the municipality's initial exercise of zoning power, and that thereafter the planning agency, which was created at the initial stage, remains present to assist the legislative body in further zoning activity, should not be considered authoritative. George v. Town of Edenton, 294 N.C. 679, 242 S.E.2d 877 (1978).

Cited in Johnson v. Town of Longview, 37 N.C. App. 61, 245 S.E.2d 516 (1978).

§ 160A-388. Board of adjustment. — (a) The city council may provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three years. In appointing the original members of such board, or in the filling of vacancies caused by the expiration of the terms of existing members, the council may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The council may, in its discretion, appoint and

provide compensation for alternate members to serve on the board in the absence of any regular member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member. A city may designate a planning agency to perform the duties of a board of adjustment in addition to its other duties.

(b) The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this Part. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.

(e) The concurring vote of four fifths of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this Article, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance. Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari. Any appeal to the superior court shall be taken within 30 days after the decision of the board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to the appellant, whichever is later. The decision of the board may be delivered to the appellant either by personal service, or registered mail or certified mail return receipt requested.

(1977, c. 912, ss. 9-12; 1979, c. 50.)

Editor's Note.—

The 1977 amendment inserted "or more" in the first sentence of subsection (a), added the last sentence of subsection (a), added "or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance" to the end of the fifth sentence of subsection (b), and added the third sentence of subsection (e).

The 1979 amendment deleted "by personal service or registered mail" after "appellant" near the end of the third sentence of subsection (e), and added the fourth sentence to subsection (e).

As the rest of the section was not changed by the amendment, only subsections (a), (b) and (e) are set out.

For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

Cited in Washington Park Neighborhood Ass'n v. Winston-Salem Zoning Bd. of Adjustment, 35 N.C. App. 449, 241 S.E.2d 872 (1978).

§ 160A-389. Remedies.

Cited in City of Hickory v. Catawba Valley Mach. Co., 39 N.C. App. 236, 249 S.E.2d 851 (1978).

Part 3A. Historic Districts.

§ 160A-395. Exercise of powers under this Part by counties as well as cities; designation of historic districts. — The term "municipality" or "municipal" as used in G.S. 160A-395 through 160A-399 shall be deemed to include the governing board or legislative board of a county, to the end that counties may exercise the same powers as cities with respect to the establishment of historic districts.

Any such legislative body may, as part of a zoning ordinance enacted or amended pursuant to this Article, designate and from time to time amend one or more historic districts within the area subject to the ordinance. Such ordinance may treat historic districts either as a separate use-district classification or as districts which overlay other zoning districts. Where historic districts are designated as separate-use districts, the zoning ordinance may include as uses by right or as conditional uses those uses found by the historic district commission to have existed during the period sought to be restored or preserved, or to be compatible with the restoration or preservation of the district. No historic district or districts shall be designated until:

(1) An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared; and

(2) The Department of Cultural Resources, acting through an agent or employee designated by its Secretary, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the Department to submit its written analysis and recommendations to the municipal governing body within 30 calendar days after a written request for such analysis has been mailed to it shall relieve the municipality of any responsibility for awaiting such analysis, and said body may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

The municipal governing body may also, in its discretion, refer the report and proposed boundaries to any local historic properties commission or other interested body for its recommendations prior to taking action to amend the zoning ordinance. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subdivision (1) of this section shall be prepared by the historic district commission, and shall be referred to the local planning agency for its review and comment according to procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposals for additional districts shall also be submitted to the Department of Cultural Resources in accordance with the provisions of subdivision (2) of this section.

On receipt of these reports and recommendations, the municipality may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions. (1965, c. 504, s. 2; 1971, c. 884, ss. 1, 2, 4; c. 896, s. 7; 1973, c. 476, s. 48; 1979, c. 646.)

Editor's Note. —
The 1979 amendment rewrote this section.

Historic District Zoning Is Inapplicable to State Property. — See opinion of Attorney General to The Honorable James C. Green, Speaker, House of Representatives, and The Honorable John T. Henley, President Pro Tempore, Senate, General Assembly of North Carolina, 45 N.C.A.G. 191 (1976).

Cited in A-S-P Assocs. v. City of Raleigh, 38 N.C. App. 271, 247 S.E.2d 800 (1978).

§ 160A-395.1. Character of historic district defined. — Historic districts established pursuant to this Part shall consist of areas which are deemed to be of special significance in terms of their history, architecture and/or culture, and to possess integrity of design, setting, materials, feeling and association. (1979, c. 646.)

§ 160A-396. Historic district commission. — Before it may designate one or more historic districts, a municipality shall establish or designate a historic district commission. The municipal governing board shall determine the number of members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history or architecture; and all the members shall reside within the territorial jurisdiction of the municipality as established pursuant to G.S. 160A-360.

In lieu of establishing a separate historic district commission, a municipality may designate as its historic district commission, (i) a historic properties commission established pursuant to G.S. 160A-399.2, (ii) a planning agency established pursuant to G.S. 160A-361, or (iii) a community appearance commission established pursuant to Part 7 of this Article. In order for a commission or board other than the historic district commission to be designated, at least two of its members shall have demonstrated special interest, experience, or education in history or architecture. At the discretion of the municipality the ordinance may also provide that the historic district commission may exercise within a historic district any or all of the powers of a planning agency or a community appearance commission.

A county and one or more cities in the county may establish or designate a joint historic district commission. If a joint commission is established or designated, the county and cities involved shall determine the residence requirements of members of the joint historic district commission. (1965, c. 504, s. 2; 1971, c. 884, ss. 1, 2, 4; c. 896, s. 7; 1973, c. 476, s. 48; 1979, c. 646.)

Editor's Note. — The 1979 amendment rewrote the second paragraph.

For a symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

§ 160A-397. Certificate of appropriateness required. — From and after the designation of a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by

the historic district commission. The municipality shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this Part. A certificate of appropriateness shall be required whether or not a building or other permit is required.

For purposes of this Part, "exterior features" shall include the architecture style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size, and location of all such signs. Such "exterior features" may, in the discretion of the local governing board, include color and important landscape and natural features of the area.

The commission shall have no jurisdiction over interior arrangement and shall take no action under this section except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district which would be incongruous with the special character of the district.

Prior to any action to enforce a historic district ordinance, the commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines not inconsistent with this Part for new construction, alterations, additions, moving and demolition. The ordinance may provide, subject to prior adoption by the historic district commission of detailed standards, for the review and approval by an administrative official, of minor works as defined by ordinance; provided, however, that no application for a certificate of appropriateness may be denied without formal action by the historic district commission.

Prior to issuance or denial of a certificate of appropriateness the commission shall take such steps as may be reasonably required in the ordinance and/or rules of procedure to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, Chapter 143, Article 33B. An appeal may be taken to the Board of Adjustment from the commission's action in granting or denying any certificate, which appeals (i) may be taken by any aggrieved party, (ii) shall be taken within times prescribed by the historic district commission by general rule, and (iii) shall be in the nature of certiorari. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the superior court of the county in which the municipality is located.

All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, as defined by the ordinance or the commission's rules of procedure. As part of its review procedure, the commission may view the premises and seek the advice of the Department of Cultural Resources or such other expert advice as it may deem necessary under the circumstances. (1965, c. 504, s. 2; 1971, c. 884, ss. 2, 5; c. 896, s. 7; 1973, c. 426, s. 60; c. 476, s. 48; 1979, c. 646.)

Editor's Note. — The 1979 amendment rewrote this section.

§ 160A-398. Certain changes not prohibited. — Nothing in this Part shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district which does not involve a change in design, material or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, moving or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition. (1965, c. 504, s. 2; 1971, c. 884, s. 2; c. 896, s. 7; 1973, c. 426, s. 60; 1978, c. 646.)

Editor's Note. — The 1979 amendment inserted "moving" near the middle of the section.

§ 160A-398.1. Applicability of Part. — No provision of this Part shall be applicable to the construction, use, alteration, moving or demolition of buildings by the State of North Carolina, its agencies and instrumentalities, or institutions of higher education. This Part shall apply to counties and municipalities. (1979, c. 646.)

§ 160A-399. Delay in demolition of buildings within historic district. — An application for a certificate of appropriateness authorizing the demolition of a building or structure within the district may not be denied. However, the effective date of such a certificate may be delayed for a period of up to 180 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the historic district commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the building. If the historic district commission finds that the building has no particular significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition or removal. (1965, c. 504, s. 2; 1971, c. 884, s. 2; c. 896, s. 7; 1979, c. 646.)

Editor's Note. — The 1979 amendment substituted the present first, second and third sentences for the former first sentence, which read: "From and after the designation of a historic district, no building or structure therein shall be demolished or otherwise removed until the owner thereof shall have given the historic district commission 90 days' written notice of his proposed action." The amendment also deleted "90-day" preceding "period" near the beginning of the fourth sentence and near the end of the fifth sentence and deleted "involved" following "building" near the beginning of the fifth sentence.

Part 3B. Historic Properties Commissions.

§ 160A-399.1. Legislative findings. — (a) The historical heritage of our State is one of our most valued and important assets. The conservation and preservation of historic properties will stabilize and increase property values in their areas and strengthen the overall economy of the State. This Part authorizes cities and counties of the State, within their respective zoning jurisdictions and by means of listing, regulation, and acquisition:

(1) To safeguard the heritage of the city or county by preserving any property therein that embodies important elements of its cultural, social, economic, political or architectural history; and

(2) To promote the use and conservation of such property for the education, pleasure and enrichment of the residents of the city or county and the State as a whole.

(b) Exercise of powers under this Part by counties as well as cities. The term "municipality" as used in G.S. 160A-399.1 through 160A-399.13 shall be deemed to include the county or its governing board or legislative board, to the end that counties may exercise the same powers as cities with respect to the establishment of historic districts. (1971, c. 885, s. 1; 1973, c. 426, s. 62; 1979, c. 644.)

Editor's Note. —
The 1979 amendment designated the former provisions of this section as subsection (a) and added subsection (b). In subsection (a) the amendment added "The" at the beginning of the second sentence, inserted "and preservation" near the beginning of that sentence and substituted "property" for "the" near the middle of that sentence.

§ 160A-399.2. Appointment or designation of historic properties commission. — Before it may exercise the powers set forth in this Part, a municipality shall establish or designate a historic properties commission. The municipality's governing board shall determine the number of members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history or architecture; and all the members shall reside within the territorial jurisdiction of the city or county as established pursuant to G.S. 160A-360. In establishing such a commission and making appointments to it, a city or county may seek the advice of any State or local historical or preservation agency, or organization.

In lieu of establishing a separate historic properties commission, a municipality may designate as its historic properties commission either (i) the city or county historic district commission, established pursuant to G.S. 160A-396, or (ii) a city or county planning agency. In order for a planning agency to be designated, at least two of its members shall have demonstrated special interest, experience, or education in history or architecture.

A county and one or more cities in the county may establish or designate a joint historic properties commission. If a joint commission is established, the county and city or cities involved shall determine the residence requirements for members of the joint historic properties commission. (1971, c. 885, s. 2; 1973, c. 426, s. 62; 1979, c. 644.)

Editor's Note. — The 1979 amendment substituted "municipality" for "city or county" near the middle of the first sentence of the first paragraph and near the beginning of the first sentence of the second paragraph and for "municipality's" near the beginning of the second sentence of the first paragraph, inserted "or preservation" and deleted "society," following "agency," near the end of the last sentence of the first paragraph, substituted "agency" for "planning board" at the end of the first sentence of the second paragraph and made other minor changes in wording in the second paragraph, and deleted "or designated" following "established" in the second sentence of the third paragraph.

For a symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

Historic District Zoning Is Inapplicable to State Property. — See opinion of Attorney General to The Honorable James C. Green, Speaker, House of Representatives, and The Honorable John T. Henley, President Pro Tempore, Senate, General Assembly of North Carolina, 45 N.C.A.G. 191 (1976).

§ 160A-399.3. Powers of the properties commission. — Any historic properties commission established pursuant to this Part shall be authorized within the zoning jurisdiction of the unit to:

(1) Undertake an inventory of properties of historical, architectural and/or archaeological significance;

(2) Recommend to the municipal governing board structures, buildings, sites, areas or objects to be designated by ordinance as "historic properties";
(3) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to any such historic properties, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;
(4) Restore, preserve and operate such historic properties;
(5) Recommend to the governing board that designation of any building, structure, site, area or object as a historic property be revoked or removed;
(6) Conduct an educational program with respect to historic properties within its jurisdiction;
(7) Cooperate with the State, federal and local governments in pursuance of the purposes of this Part. The governing board or the commission when authorized by the governing board may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law;
(8) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof. (1971, c. 885, s. 3; 1973, c. 426, s. 62; 1979, c. 644.)

Editor's Note. — The 1979 amendment rewrote this section.

§ 160A-399.4. Adoption of an ordinance; criteria for designation. — Upon complying with G.S. 160A-399.5, the governing board may adopt and from time to time amend or repeal an ordinance designating one or more historic properties. No property shall be recommended for designation as a historic property unless it is deemed and found by the properties commission to be of special significance in terms of its history, architecture, and/or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, and/or archaeological value, including the approximate area of the property so designated, and any other information the governing board deems necessary. For each building, structure, site, area or object so designated as a historic property, the ordinance shall require that the waiting period set forth in this Part be observed prior to its demolition, alteration, remodeling or removal. For each designated historic property, the ordinance may also provide for a suitable sign on the property indicating that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way. (1971, c. 885, s. 4; 1973, c. 426, s. 62; 1977, c. 869, s. 3; 1979, c. 644.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, rewrote the first sentence of the second paragraph.

The 1979 amendment rewrote the first paragraph, and, in the second paragraph, substituted "the property so designated" for

"surrounding land" in the first sentence, deleted "within the authority of this Part" at the end of the first sentence, substituted "this Part" for "G.S. 160A-399.6" and deleted "material" preceding "alteration" in the second sentence and substituted "may" for "shall" preceding "also provide" and inserted "indicating" in the third sentence.

§ 160A-399.5. Required procedures. — As a guide for the identification and evaluation of historic properties, the commission shall undertake, at the earliest possible time and consistent with the resources available to it, an inventory of properties of historical, architectural and cultural significance within its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the Division of Archives and History. No ordinance designating a historic building, structure, site, area or object nor any amendment thereto may be adopted, nor may any property be accepted or acquired by a historic properties commission or the governing board of a municipality, until the following procedural steps have been taken:

(1) The historic properties commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines, not inconsistent with this Part, for altering, restoring, moving or demolishing properties designated as historic.

(2) The historic properties commission shall make or cause to be made an investigation and report on the historic, architectural, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. Such investigation or report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.

(3) The Department of Cultural Resources, acting through any employee designated by the secretary or the North Carolina Historical Commission shall either upon request of the department or at the initiative of the historic properties commission be given an opportunity to review and comment upon the substance and effect of the designation of any historic property pursuant to this Part. Any comments shall be provided in writing. If the Department does not submit its comments or recommendations in connection with any designation within 30 days following receipt by the Department of the investigation and report of the commission, the commission and any city or county governing board shall be relieved of any responsibility to consider such comments.

(4) The historic properties commission and the governing board shall hold a public hearing on the proposed ordinance. Reasonable notice of the time and place thereof shall be given. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, Chapter 143, Article 33B.

(5) Following the joint public hearing, the governing board may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

(6) Upon adoption of the ordinance, the owners and occupants of each designated historic property shall be given written notification of such designation insofar as reasonable diligence permits. One copy of the ordinance and all amendments thereto shall be filed by the historic properties commission in the office of the register of deeds of the county in which the property or properties are located. Each historic property designated shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the historic properties commission shall pay a reasonable fee for filing and indexing. In the case of any property lying within the zoning jurisdiction of a city, a second copy of the ordinance and all amendments thereto shall be kept on file in the office of the city

or town clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the city or county building inspector. The fact that a building, structure, site, area or object has been designated a historic property shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(7) Upon the adoption of the historic properties ordinance or any amendment thereto, it shall be the duty of the historic properties commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes. (1971, c. 885, s. 5; 1973, c. 426, s. 62; c. 426, s. 48; 1977, c. 869, ss. 4-6; 1979, c. 644.)

Editor's Note. — The 1977 amendment, effective Jan. 1, 1978, rewrote the introductory paragraph and subdivisions (1) and (2).

The 1979 amendment rewrote this section.

§ 160A-399.6. Certificate of appropriateness required. — A property which has been designated as a historic property as herein provided may be materially altered, restored, moved or demolished only following the issuance of a certificate of appropriateness by the historic properties commission in accordance with the procedures and standards set forth in Part 3A of this Article. An application for a certificate of appropriateness authorizing the demolition of a designated building or structure or the destruction of an object may not be denied. However, the effective date of such a certificate may be delayed for a period of up to 180 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be deprived of all beneficial use of or return from such property by virtue of the delay. During such period the historic properties commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the building, structure, or object. (1971, c. 885, s. 6; 1973, c. 426, s. 62; 1979, c. 644.)

Editor's Note. — The 1979 amendment rewrote this section.

§ 160A-399.7. Certain changes not prohibited. — Nothing in this Part shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on a historic property that does not involve a change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, demolition or removal of any such feature when a building inspector or similar official certifies to the commission that such action is required for the public safety because of an unsafe or dangerous condition. Nothing herein shall be construed to prevent a property owner from making any use of his property not prohibited by other statutes, ordinances or regulations. (1971, c. 885, s. 7; 1973, c. 426, s. 62; 1979, c. 644.)

Editor's Note. — The 1979 amendment reenacted this section. The only change was the deletion of a comma following "ordinances" in the second sentence.

§ 160A-399.8. Authority to acquire historic properties. — When such action is reasonably necessary or appropriate for the preservation of a designated historic property, the commission may negotiate at any time with the owner for

its preservation in accordance with the provisions of Parts 3A and 3B. (1971, c. 885, s. 8; 1973, c. 426, s. 62; 1979, c. 107, s. 13; c. 644.)

Editor's Note. — The first 1979 amendment substituted references to sections in Chapters 153A and 160A for references to sections in Chapters 153 and 160 in the section as it stood before the second 1979 amendment. The second 1979 amendment rewrote the section to read as set out above.

§ 160A-399.9. Appropriations. — A city or county governing board is authorized to make appropriations to a historic properties commission established pursuant to this Part in any amount that it may determine necessary for the expenses of the operation of the commission, and may make available any additional amounts necessary for the acquisition, restoration, preservation, operation and management of historic buildings, structures, sites, areas or objects designated as historic properties, or of land on which historic buildings or structures are located, or to which they may be removed. (1971, c. 885, s. 9; 1973, c. 426, s. 62; 1979, c. 644.)

Editor's Note. — The 1979 amendment reenacted this section. The only change was the insertion of a comma following "located" near the end of the section.

§ 160A-399.10. Ownership of property. — All lands, buildings, structures, sites, areas or objects acquired by funds appropriated by a city or county shall be acquired in the name of the city or county unless otherwise provided by the governing board. So long as owned by the city or county, historic properties may be maintained by or under the supervision and control of the city or county. However, all lands, buildings or structures acquired by a historic properties commission from funds other than those appropriated by a city or county may be acquired in the name of the historic properties commission, the city or county, or both. (1971, c. 885, s. 10; 1973, c. 426, s. 62; 1979, c. 644.)

Editor's Note. — The 1979 amendment deleted "and held" following "may be acquired" in the third sentence.

§ 160A-399.11. Part to apply to publicly owned buildings and structures. — All of the provisions of this Part are hereby made applicable to the construction, use, alteration, moving and demolition of buildings by the State of North Carolina, its political subdivisions, agencies and instrumentalities, provided that neither this section nor Part 3B of Chapter 160A shall apply to any project of the University of North Carolina or its constituent institutions for which an application has been submitted prior to May 25, 1979. (1971, c. 885, s. 11; 1973, c. 426, s. 62; 1979, c. 644.)

Editor's Note. — The 1979 amendment rewrote this section, which formerly provided that nothing in this Part should be construed to prevent the regulation or acquisition of historic buildings, structures, sites, areas or objects owned by the State or any of its political subdivisions, agencies or instrumentalities.

§ 160A-399.12. Conflict with other laws. — Whenever any ordinance adopted pursuant to this Part requires a longer waiting period or imposes other higher standards with respect to a designated historic property than are established under any other statute, charter provision, or regulation, this Part shall govern. Whenever the provisions of any other statute, charter provision, ordinance or regulation require a longer waiting period or impose other higher standards than

are established under this Part, such other statute, charter provision, ordinance or regulation shall govern. (1971, c. 885, s. 12; 1973, c. 426, s. 62; 1979, c. 644.)

Editor's Note. — The 1979 amendment reenacted this section without change.

§ 160A-399.13. Remedies. — In case any building, structure, site, area or object designated as a historic property pursuant to this Part is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the ordinance or the provisions of this Part, the city or county, the historic properties commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such historic property. Such remedies shall be in addition to any others authorized by this Chapter for violation of a municipal ordinance. (1971, c. 885, s. 13; 1973, c. 426, s. 62; 1979, c. 644.)

Editor's Note. — The 1979 amendment, in the first sentence, inserted "as" and "pursuant to this Part" near the beginning of the sentence, substituted "remodeled, removed or destroyed" for "remodeled or removed" and inserted "or the provisions of this Part," "or other party aggrieved by such action" near the middle of the sentence and "destruction" near the end of the sentence. The amendment added the second sentence.

Part 4. Acquisition of Open Space.

§ 160A-401. Legislative intent.

Editor's Note. — For comment, "Urban Planning And Land Use Regulation: The Need for Consistency," see 14 Wake Forest L. Rev. 81 (1978).

Part 5. Building Inspection.

§ 160A-411. Inspection department. — Every city in the State is hereby authorized to create an inspection department, and may appoint one or more inspectors who may be given the titles of building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire prevention inspector, or deputy or assistant inspector, or such other titles as may be generally descriptive of the duties assigned. The department may be headed by a superintendent or director of inspections. Every city shall perform the duties and responsibilities set forth in G.S. 160A-412 either by: (i) creating its own inspection department; (ii) creating a joint inspection department in cooperation with one or more other units of local government, pursuant to G.S. 160A-413 or Part 1 of Article 20 of this Chapter; (iii) contracting with another unit of local government for the provision of inspection services pursuant to Part 1 of Article 20 of this Chapter; or (iv) arranging for the county in which it is located to perform inspection services within the city's jurisdiction as authorized by G.S. 160A-413 and G.S. 160A-360. Such action shall be taken no later than the applicable date in the schedule below, according to the city's population as published in the 1970 United States Census:

Cities over 75,000 population — July 1, 1979
Cities between 50,001 and 75,000 — July 1, 1981
Cities between 25,001 and 50,000 — July 1, 1983
Cities 25,000 and under — July 1, 1985.

In the event that any city shall fail to provide inspection services by the date specified above or shall cease to provide such services at any time thereafter, the Commissioner of Insurance shall arrange for the provision of such services, either through personnel employed by his department or through an arrangement with other units of government. In either event, the Commissioner shall have and may exercise within the city's jurisdiction all powers made available to the city council with respect to building inspection under Part 5 of Article 19, and Part 1 of Article 20 of this Chapter. Whenever the Commissioner has intervened in this manner, the city may assume provision of inspection services only after giving the Commissioner two years' written notice of its intention to do so; provided, however, that the Commissioner may waive this requirement or permit assumption at an earlier date if he finds that such earlier assumption will not unduly interfere with arrangements he has made for the provision of those services. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1977, c. 531, s. 5.)

Editor's Note. — The 1977 amendment substituted "may" for "shall" near the beginning of the first sentence of the first paragraph and added the second and third paragraphs.

Session Laws 1977, c. 551, s. 7, provides: "The provisions of this act shall not be applicable to municipalities of less than 25,000 population or to counties of less than 75,000 population according to the 1970 U.S. Census, and shall not be applicable to any officials or employees of any such municipality or county unless the Legislative Research Commission makes affirmative findings of fact that as of July 1, 1984, there exist within the State adequate in-service and pre-service training opportunities to permit employees or prospective employees of such municipalities and counties to secure at various convenient places throughout the State or by correspondence courses the training necessary to retain limited certificates or to secure standard certificates, and to provide an adequate pool of qualified personnel to enforce applicable codes in such municipalities or counties. Unless the Legislative Research Commission shall make such affirmative findings of fact, then neither the North Carolina Code Officials Qualification Board nor the North Carolina Building Code Council nor the Commissioner of Insurance nor the Department of Insurance shall enforce any provision of this act as to any municipality of less than 25,000 population or any county of less than 75,000 population according to the 1970 U.S. Census or as to any official or employee or any such municipality or county."

For comment, "Urban Planning And Land Use Regulation: The Need For Consistency," see 14 Wake Forest L. Rev. 81 (1978).

§ 160A-411.1. Qualifications of inspectors. — On and after the applicable date set forth in the schedule in G.S. 160A-411, no city shall employ an inspector to enforce the State Building Code as a member of a city or joint inspection department who does not have one of the following types of certificates issued by the North Carolina Code Officials Qualification Board attesting to his qualifications to hold such position: (i) a probationary certificate, valid for one year only; (ii) a standard certificate; or (iii) a limited certificate which shall be valid only as an authorization for him to continue in the position held on the date specified in G.S. 143-151.13(c) and which shall become invalid if he does not successfully complete in-service training specified by the Qualification Board within the period specified in G.S. 143-151.13(c). An inspector holding one of the above certificates can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position. (1977, c. 531, s. 6.)

Cross Reference. — As to the North Carolina Code Officials Qualification Board, and certification of Code-enforcement officials, see §§ 143-151.8 through 143-151.20.

Editor's Note. — Session Laws 1977, c. 551, s. 7, provides: "The provisions of this act shall not be applicable to municipalities of less than 25,000 population or to counties of less than 75,000

population according to the 1970 U.S. Census, and shall not be applicable to any officials or employees of any such municipality or county unless the Legislative Research Commission makes affirmative findings of fact that as of July 1, 1984, there exist within the State adequate in-service and pre-service training opportunities to permit employees or prospective employees of such municipalities and counties to secure at various convenient places throughout the State or by correspondence courses the training necessary to retain limited certificates or to secure standard certificates, and to provide an adequate pool of qualified personnel to enforce applicable codes in such municipalities or counties. Unless the Legislative Research Commission shall make such affirmative findings of fact, then neither the North Carolina Code Officials Qualification Board nor the North Carolina Building Code Council nor the Commissioner of Insurance nor the Department of Insurance shall enforce any provision of this act as to any municipality of less than 25,000 population or any county of less than 75,000 population according to the 1970 U.S. Census or as to any official or employee of any such municipality or county."

§ 160A-417. Permits.

Cross Reference. — For provisions specifying that permits required for installation, alteration, or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards meet all requirements of § 153A-357 or this section, see §. 143-155.

§ 160A-420. Inspections of work in progress.

Cross Reference. — As to inspections by the energy and insulation inspector during the installation, alteration, or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards, see § 143-157.

§ 160A-423. Certificates of compliance.

Cross Reference. — As to issuance by the energy and insulation inspector of a certificate of compliance for work done with regard to the installation, alteration, or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards, see § 143-157.

§ 160A-429. Order to take corrective action. — If, upon a hearing held pursuant to the notice prescribed in G.S. 160A-428, the inspector shall find that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, he shall make an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps, within such period, not less than 60 days, as the inspector may prescribe; provided, that where the inspector finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 68; 1977, c. 912, s. 13.)

Editor's Note. — The 1977 amendment added the proviso to the end of the section.

Part 6. Minimum Housing Standards.

§ 160A-441. Exercise of police power authorized.

Editor's Note. —
For comment, "Urban Planning And Land Use Regulation: The Need For Consistency," see 14 Wake Forest L. Rev. 81 (1978).

§ 160A-445. Service of complaints and orders. — Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Part shall be served upon persons either personally or by registered or certified mail. If the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this Part. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected. (1939, c. 287, s. 5; 1965, c. 1055; 1969, c. 868, ss. 3, 4; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1977, c. 912, s. 14.)

Editor's Note. —
The 1977 amendment substituted "are unknown" for "is unknown" and the language beginning "in a newspaper having general circulation" for "in the manner prescribed in the Rules of Civil Procedure" in the second sentence.

Part 7. Community Appearance Commissions.

§ 160A-451. Membership and appointment of commission; joint commission.

Editor's Note. —
For a symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

Part 8. Community Development.

§ 160A-456. Community development programs and activities.

Editor's Note. —
For a symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

§ 160A-457. Acquisition and disposition of property for redevelopment. — In addition to the powers granted by G.S. 160A-456, any city is authorized, either as a part of a community development program or independently thereof, and without the necessity of compliance with the Urban Redevelopment Law, to exercise the following powers:

(1) To acquire, by voluntary purchase from the owner or owners, real property which is either:
   a. Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;

b. Appropriate for rehabilitation or conservation activities;
c. Appropriate for housing construction or the economic development of the community; or
d. Appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open space, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;

(2) To clear, demolish, remove, or rehabilitate buildings and improvements on land so acquired; and

(3) To retain property so acquired for public purposes, or to dispose, through sale, lease, or otherwise, of any property so acquired to any person, firm, corporation, or governmental unit; provided, the disposition of such property shall be undertaken in accordance with the procedures of Article 12 of this Chapter, or the procedures of G.S. 160A-514, or any applicable local act or charter provision modifying such procedures. (1977, c. 660, s. 1.)

Local Modification. — City of Wilson: 1977, 2nd Sess., c. 1196.

§§ 160A-458, 160A-459: Reserved for future codification purposes.

Article 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

§ 160A-460. Definitions. — The words defined in this section shall have the meanings indicated when used in this Part:

(1) "Undertaking" means the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government.

(2) "Unit," or "unit of local government" means a county, city, consolidated city-county, sanitary district, or other local political subdivision, authority, or agency of local government. (1971, c. 698, s. 1; 1975, c. 821, s. 4; 1979, c. 774, s. 1.)

Editor's Note. —
The 1979 amendment deleted "administrative or governmental" before "power" near the middle of subdivision (1).

§ 160A-465: Repealed by Session Laws 1979, c. 774, s. 2.

Part 2. Regional Councils of Governments.

§ 160A-470. Creation of regional councils, definition of "unit of local government."

The purpose of councils of governments is to coordinate governmental functions best undertaken on a regional level. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421,

245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

Council Not Political Subdivision of State. — Once created, the council does not become a municipality, or a political or governmental subdivision of the State in the same sense as a city, town or county. A council may take on some of the attributes and functions of a political subdivision, but does not possess the powers which municipalities are said to possess. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

Standing to Contest Council Activities. — A taxpayer and resident of an area encompassed by a regional council of governments does have standing to contest allegedly illegal activities of the council where such activities are funded by tax moneys or property derived from local or federal sources, or where such activities may later require support by tax moneys. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

§ 160A-475. Specific powers of council. — The charter may confer on the regional council any of the following powers:

(8) Any other powers that are exercised or capable of exercise by its member governments and desirable for dealing with problems of mutual concern to the extent such powers are specifically delegated to it from time to time by resolution of the governing board of each of its member governments which are affected thereby, provided, that no regional council of governments shall have the authority to construct or purchase buildings, or acquire title to real property, except in order to exercise the authority granted by Chapter 260 of the Session Laws of 1979. (1971, c. 698, s. 1; 1975, c. 517, ss. 1, 2; 1979, c. 902.)

Editor's Note. —

The 1979 amendment added the proviso at the end of subdivision (8).

Powers Not Conferred by Charter Must Be Specifically Delegated. — The intention of the legislature, by the adoption of subdivision (8) of this section, is that any powers not conferred on a council by its charter be possessed and exercised only upon the express authorization of each of the member governments. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

Except for the powers conferred by its charter, a council may neither possess nor exercise any powers which are not specifically delegated by each of its member governments. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

Council Has No Power of Land Ownership Unless Such Power Is Delegated to It by Its Members. — Region D Council of Governments did not have the power to hold title to real estate and to construct on real estate an office building for its own use and for rental purposes in competition with private enterprise since subdivisions (1) through (7) of this section do not include the power of land ownership, and since that power was not delegated by the member governments. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978), decided prior to 1979 amendment.

The purpose of councils of governments is to coordinate governmental functions best undertaken on a regional level. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

Council Not Political Subdivision. — Once created, the council does not become a municipality, or a political or governmental subdivision of the State in the same sense as a city, town or county. A council may take on some of the attributes and functions of a political subdivision, but does not possess the powers which municipalities are said to possess. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

Standing to Contest Council Activities. — A taxpayer and resident of an area encompassed by a regional council of governments does have standing to contest allegedly illegal activities of the council where such activities are funded by tax moneys or property derived from local or federal sources, or where such activities may later require support by tax moneys. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

§ 160A-476. Fiscal affairs.

Regional Council Not Political Subdivision. — Once created, the council does not become a municipality, or a political or governmental subdivision of the State in the same sense as a city, town or county. A council may take on some of the attributes and functions of a political subdivision, but does not possess the powers which municipalities are said to possess. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

ARTICLE 21.

Miscellaneous.

§ 160A-492. Human relations, community action and manpower development programs.

Cross Reference. — As to power of counties to take action under this section, see § 153A-445.

§ 160A-497. Senior citizens programs. — Any city may undertake programs for the assistance and care of its senior citizens including but not limited to programs for in-home services, food service, counseling, recreation and transportation, and may appropriate funds for such programs. Any city council may contract with any other governmental agency, or with any public or private association, corporation or organization in undertaking senior citizens programs, and may appropriate funds to any such governmental agency, or to any such public or private association, corporation or organization for the purpose of carrying out such programs. In the event funds appropriated for the purposes of this section are turned over to any agency or organization other than the city for expenditure, no such expenditure shall be made until the city has approved it, and all such expenditures shall be accounted for by the agency or organization at the end of the fiscal year for which they were appropriated. For purposes of this section, the words "senior citizens" shall mean citizens of a city who are at least 60 years of age. (1977, c. 187, s. 1; c. 647, ss. 1, 2.)

Editor's Note. — The 1977 amendment substituted "or with any public or private association, corporation or organization in undertaking" for "association, or corporation in undertaking" and "or to any such public or private association, corporation or organization for the purpose" for "association or corporation for the purpose" in the second sentence.

§§ 160A-498, 160A-499: Reserved for future codification purposes.

ARTICLE 22.

Urban Redevelopment Law.

§ 16A-501. Findings and declaration of policy.

Quoted in Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978).

§ 160A-503. Definitions.

Power of Housing Authority to Close Public Streets. — Although the City of Raleigh did not delegate its police power to close public streets to the Housing Authority of Raleigh, the Housing Authority did not lack that power since the Housing Authority had power to take public streets by eminent domain with Raleigh's consent, and to carry out redevelopment projects which included removal of existing streets, utilities or other improvements. Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978), cert. denied, 296 N.C. 414, S.E.2d (1979).

Cited in Campbell v. First Baptist Church, 39 N.C. App. 117, 250 S.E.2d 68 (1978).

§ 160A-505. Alternative organization.

Cited in Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978).

§ 160A-511. Interest of members or employees. — No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, or in any area which he may have reason to believe may be certified to be a redevelopment area, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project, except that a member or employee of a commission may acquire property in a residential redevelopment area from a person or entity other than the commission after the residential redevelopment plan for that area is adopted if:

(1) The primary purpose of acquisition is to occupy the property as his principal residence;
(2) The redevelopment plan does not provide for acquisition of such property by the commission; and
(3) Prior to acquiring title to the property, the member or employee shall have disclosed in writing to the commission and to the local governing body his intent to acquire the property and to occupy the property as his principal residence.

Except as authorized herein, the acquisition of any such interest in a redevelopment project or in any such property or contract shall constitute misconduct in office. If any member or employee of a commission shall have already owned or controlled within the preceding two years any interest, direct or indirect, in any property later included or planned to be included in any redevelopment project, under the jurisdiction of the commission, or has any such interest in any contract for material or services to be furnished or used in connection with any redevelopment project, he shall disclose the same in writing to the commission and to the local governing body. Any disclosure required herein shall be entered in writing upon the minute books of the commission. Failure to make disclosure shall constitute misconduct in office. (1951, c. 1095, s. 8; 1973, c. 426, s. 75; 1977, 2nd Sess., c. 1139.)

Editor's Note. — The 1977, 2nd Sess., amendment divided this section into paragraphs, added at the end of the introductory language in the first paragraph the language beginning "except that a member or employee" and ending "adopted if:", added subdivisions (1), (2) and (3) to the first paragraph, added "Except as authorized herein" at the beginning of the first sentence of the second paragraph, and divided the former third sentence of the section into the present second and third sentences of the second paragraph, substituting "Any disclosure

required herein" for "and such disclosure" at the beginning of the present third sentence of the second paragraph.

§ 160A-512. Powers of commission.

Power of Housing Authority to Close Public Streets. — Although the City of Raleigh did not delegate its police power to close public streets to the Housing Authority of Raleigh, the Housing Authority did not lack that power since the Housing Authority had power to take public streets by eminent domain with Raleigh's consent, and to carry out redevelopment projects which included removal of existing streets, utilities or other improvements. Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978), cert. denied, 296 N.C. 414, S.E.2d (1979).

Cost of Relocating Telephone Company Lines Not Compensable. — The cost of relocating a telephone company's telephone lines from an area being redeveloped could not be reimbursed as a taking under eminent domain. No property or interest of the telephone company was "taken," the situation being analogous to those decided North Carolina cases which hold that where a leasehold is condemned the tenant's cost of moving his business to a new location is not compensable. Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978), cert. denied, 296 N.C. 414, S.E.2d (1979).

Expenses incurred by a telephone company in relocating telephone lines from an area being redeveloped could not be held to be necessary expenditures within the meaning of subdivision (11), since at common law no such reimbursement was required, and no expression of legislative intent that relocation expenses should be compensable can be found. Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978), cert. denied, 296 N.C. 414, S.E.2d (1979).

Cited in Campbell v. First Baptist Church, 39 N.C. App. 117, 250 S.E.2d 68 (1978).

§ 160A-514. Required procedures for contracts, purchases and sales; powers of commission in carrying out redevelopment project.

Local Modification. — City of Raleigh: 1973, c. 346; 1977, c. 76; town of Chapel Hill: 1973, c. 346; 1977, c. 76.

Session Laws 1977, c. 76, amended Session Laws 1973, c. 346, without making any reference to Session Laws 1975, c. 379, which made the 1973 act applicable to the town of Tarboro.

Exchange of Property with Church Is "Sale" within Subsection (d). —

The "exchange" of property between a redevelopment commission and a "redeveloper" such as a church is nothing more than a "private sale" of real property to "a nonprofit association or corporation operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes" as described in subsection (d) of this section and such exchange must be in compliance with all of the requirements of subsection (d). Campbell v. First Baptist Church, 39 N.C. App. 117, 250 S.E.2d 68 (1978).

Procedure for Conveyance to "Nonprofit Association or Corporation." — Before it can lawfully convey property to a "nonprofit association or corporation," a redevelopment commission must: (1) hold a public hearing on the proposed conveyance after proper advertisement, (2) get approval for the proposed conveyance from the governing body of the municipality, and (3) agree with the proposed transferee on the consideration for the conveyance which is not less than the fair value of the property as determined by a committee of three professional real estate appraisers. Campbell v. First Baptist Church, 39 N.C. App. 117, 250 S.E.2d 68 (1978).

§ 160A-515. Eminent domain.

Power of Housing Authority to Close Public Streets. — Although the City of Raleigh did not delegate its police power to close public streets to the Housing Authority of Raleigh, the Housing Authority did not lack that power since the Housing Authority had power to take public streets by eminent domain with Raleigh's consent, and to carry out redevelopment projects which included removal of existing streets, utilities or other improvements. Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978), cert. denied, 296 N.C. 414, S.E.2d (1979).

§ 160A-522. Title of purchaser.

This section is not available to revive an instrument that was void from its inception. Campbell v. First Baptist Church, 39 N.C. App. 117, 250 S.E.2d 68 (1978).

ARTICLE 23.

Municipal Service Districts.

§ 160A-536. Purposes for which districts may be established. — The city council of any city may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city:

(1) Beach erosion control and flood and hurricane protection works;
(2) Downtown revitalization projects;
(3) Drainage projects;
(4) Off-street parking facilities; and
(5) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water resources development projects provided for by General Statutes Chapter 143, Article 21.

As used in this section "downtown revitalization projects" include by way of illustration but not limitation improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements therefor, the construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street, and other improvements intended to relieve traffic congestion in the central city, improve pedestrian and vehicular access thereto, reduce the incidence of crime therein, and generally to further the public health, safety, welfare, and convenience by promoting the economic health of the central city or downtown area. In addition, a downtown revitalization project may, in order to revitalize a downtown area and further the public health, safety, welfare, and convenience, include the provision of city services or functions in addition to or to a greater extent than those provided or maintained for the entire city. A downtown revitalization project may also include promotion and developmental activities (such as sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area) designed to improve the economic well-being of the downtown area and further the public health, safety, welfare, and convenience. Exercise of the authority granted by this Article to undertake downtown revitalization projects financed by a municipal service district shall not prejudice the city's authority to undertake urban renewal projects in the same area.

A city may provide services, facilities, functions, or promotional and developmental activities in a service district with its own forces, through a contract with another governmental agency, through a contract with a private agency, or by any combination thereof. Any contracts entered into pursuant to this paragraph shall specify the purposes for which city moneys are to be used and shall require an appropriate accounting for those moneys at the end of each fiscal year or other appropriate period. (1973, c. 655, s. 1; 1977, c. 775, ss. 1, 2; 1979, c. 595, s. 2.)

Editor's Note. — The 1977 amendment added the present second and third sentences of the second paragraph and added the third paragraph.

The 1979 amendment added subdivision (5) of the first paragraph.

Session Laws 1977, c. 775, s. 5, provides: "This act shall become effective upon ratification, but shall not apply to any district established prior to January 1, 1975."

Session Laws 1979, c. 595, s. 3, provides: "This act applies to existing projects and programs as well as new projects and programs. The financing or operation, or both, of a project or program authorized by General Statutes Chapter 139, Article 21 of General Statutes Chapter 143, General Statutes Chapter 156, or any other law, may be discontinued under the law by which it was initiated and may be undertaken by a service district as defined in General Statutes Chapter 153A or 160A."

§ 160A-538.1. Reduction of service districts. — (a) Upon finding that there is no longer a need to include within a particular service district any certain tract or parcel of land, the city council may by resolution redefine a service district by removing therefrom any tract or parcel of land which it has determined need no longer be included in said district. The city council shall hold a public hearing before adopting a resolution removing any tract or parcel of land from a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing.

(b) The removal of any tract or parcel of land from any service district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the city council. (1977, c. 775, s. 3.)

Editor's Note. — Session Laws 1977, c. 775, s. 5, provides: "This act shall become effective upon ratification, but shall not apply to any district established prior to January 1, 1975."

§ 160A-544. Exclusion of personal property of public service corporations. — There shall be excluded from any service district and the provisions of this Article shall not apply to the personal property of any public service corporation as defined in G.S. 160A-243(c); provided that this section shall not apply to any service district in existence on January 1, 1977. (1977, c. 775, s. 4.)

Editor's Note. — Session Laws 1977, c. 775, s. 5, provides: "This act shall become effective upon ratification, but shall not apply to any district established prior to January 1, 1975."

Chapter 161.

Register of Deeds.

Article 1.

The Office.

§ 161-5. Vacancy in office. — (a) When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law.

In those counties subject to this paragraph, when a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by appointment of a successor for the unexpired term. The successor shall be from the same political party as the register of deeds being succeeded, and shall qualify and give bond as required by law. The appointment shall be from a list of three persons recommended by the county executive committee of the same political party as the register of deeds being succeeded, and these recommendations shall be made within 30 days of the vacancy and the appointment shall be made within 30 days from the receipt of recommendations; provided, if no recommendations are made within 30 days the county commissioners may proceed to fill the vacancy. This paragraph shall apply only to the Counties of Buncombe, Cherokee, Clay, Forsyth, Graham, Haywood, Henderson, Jackson, Macon, Madison, Swain and Transylvania.

(1977, c. 180.)

Editor's Note. —

The 1977 amendment added Henderson in the list of counties in the last sentence of the second paragraph of subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

§ 161-10. Uniform fees of registers of deeds. — (a) In the performance of his duties, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. — For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be three dollars ($3.00) for the first page, which page shall not exceed eight and one-half inches by 14 inches, plus one dollar ($1.00) for each additional page or fraction thereof. A page exceeding eight and one-half inches by 14 inches shall be considered two pages.

(2) Marriage Licenses. — For issuing a license — ten dollars ($10.00); for issuing a delayed certificate with one certified copy — five dollars ($5.00); and for a proceeding for correction of names in application, license or certificate, with one certified copy — five dollars ($5.00).

(3) Plats. — For each original or revised plat recorded — ten dollars ($10.00); for furnishing a certified copy of a plat — two dollars ($2.00).

(4) Right-of-Way Plans. — For each original or amended plan and profile sheet recorded — five dollars ($5.00). This fee is to be collected from the Board of Transportation.

(5) Registration of Birth Certificate Four Years or More after Birth. — For preparation of necessary papers when birth to be registered in another county — two dollars and fifty cents ($2.50); for registration when necessary papers prepared in another county, with one certified copy — two dollars and fifty cents ($2.50); for preparation of necessary papers and registration in the same county, with one certified copy — five dollars ($5.00).

(6) Amendment of Birth or Death Record. — For preparation of amendment and effecting correction — one dollar ($1.00).

(7) Legitimations. — For preparation of all documents concerned with legitimations — five dollars ($5.00).

(8) Certified Copies of Birth and Death Certificates and Marriage Licenses. — For furnishing a certified copy of a death or birth certificate or marriage license — two dollars ($2.00).

(9) Certified Copies. — For furnishing a certified copy of any instrument for which no other provision is made by this section — one dollar ($1.00) per page or fraction thereof.

(10) Comparing Copy for Certification. — For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof — one dollar ($1.00).

(11) Uncertified Copies. — When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be prominently posted in his office.

(12) Acknowledgment. — For taking an acknowledgment, oath, or affirmation or for the performance of any notarial act — one dollar ($1.00). This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

(13) Uniform Commercial Code. — Such fees as are provided for in Chapter 25, Article 9, Part 4, of the General Statutes.

(14) Torrens Registration. — Such fees as are provided in G.S. 43-5.

(15) Master Forms. — Such fees as are provided for instruments in general.

(16) Probate. — For certification of instruments for registration as provided in G.S. 47-14 — one dollar ($1.00).

(17) Qualification of Notary Public. — For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10-2 — three dollars ($3.00).

(18) Reinstatements of Articles of Incorporation. — For filing reinstatements of articles of incorporation prepared pursuant to G.S. 105-232 — two dollars ($2.00). The fee shall be paid by the corporation affected.

(1977, 2nd Sess., c. 1132.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, increased the fee in subdivision (8) of subsection (a) from $1.00 to $2.00.

The 1977, 2nd Sess., amendment, effective July 1, 1978, increased the fees in subdivisions (1), (2), (3) and (16) of subsection (a). As the rest of the section was not changed by the amendment, only subsection (a) is set out.

ARTICLE 2.

The Duties.

§ 161-16. Liability for failure to register.

Local Modification. — Caswell: 1977, c. 391.

§ 161-22.2. Parcel identifier number indexes. — (a) In lieu of the alphabetical indexes required by G.S. 161-21, 161-22 and 161-22.1, the register of deeds of any county in which unique parcel identifier numbers have been assigned to all parcels of real property may install an index by land parcel identifier numbers. For each instrument filed of record, the entry in a land parcel identifier number index must contain the following information:

(1) The parcel identifier number of the parcel or parcels affected;

(2) A brief description of the parcel or parcels, including subdivision block and lot number, if any;

(3) A description of the type of instrument recorded and the date the instrument was filed;

(4) The names of the parties to the instrument to the same extent as required by G.S. 161-22 and the legal status of the parties indexed;

(5) The book and page number, or film reel and frame number, or other file number where the instrument is recorded.

(b) Every instrument affecting real property filed for recording in the office of such register of deeds shall be indexed under the parcel identifier number of the land parcel or parcels affected.

(c) The parcel identifier number index may be maintained in index books, on index cards, on film, or in computers or other automated data-processing machines. If the parcel identifier number index is maintained in a computer or other automated data-processing machine, the register of deeds shall, at least once each month, obtain from the computer or other data-processing machine a printed copy on paper or film of all index entries made since the previous printed copy was obtained. The printed copies shall be retained as security copies and shall not be altered or destroyed.

(d) Before a register of deeds may install a parcel identifier number index in lieu of the alphabetical indexes required by G.S. 161-22, the proposed index must be approved by the Secretary of the North Carolina Department of Administration. Before approving a parcel identifier number index, the Secretary must find that:

(1) The requirements of this section, G.S. 161-22, and all other applicable indexing requirements of the North Carolina General Statutes and applicable judicial decisions will be met by the index;

(2) Measures for the protection of the indexed information are such that computer or other machine failure will not cause an irremediable loss of the information;

(3) Printed forms and index sheets used in the index permit a display of all information required by law and are otherwise adequate;

(4) Any computer or other data-processing machine used and the program for the use of such machines are adequate to perform the tasks assigned to them;
(5) Access to the information contained in the index can be obtained by the use of both a parcel identifier number and the name of any party to an instrument filed of record;
(6) Any parcel identifier number either reflects the State plane coordinates of some point in the parcel, or is keyed to a map of the parcel that shows the location of the parcel within the county;
(7) The parcel identifier numbering system is designed so that no parcel will be assigned the same number as any other parcel within the county;
(8) The parcel identifier numbering system shows for parcels of land created by subdivision, the number of the parcel of land subdivided in addition to the numbers of the newly-created parcels;
(9) The parcel identifier numbering system shows for parcels of land created by the combining of separate parcels, the numbers of the land parcels that were combined in addition to the number of the newly-created parcel;
(10) The parcel identifier numbering system is capable of identifying condominium units and other separate legal interests that may be created in a single parcel of land;
(11) The parcel identifier numbering system will meet the needs of the users as well as or better than the alphabetical indexes required by G.S. 161-21, 161-22 and 161-22.1.

The Secretary may require a register of deeds seeking approval of a parcel identifier number index to furnish him with any information concerning the index that is pertinent to the findings required for approval.

(e) (1) An approved parcel identifier number index shall become effective as the official real property index of the county as of the first day of July following approval by the Secretary of Administration.
(2) In any county in which a parcel identifier index is the official index, the register of deeds shall post notices in the alphabetical index books and at other appropriate places in his office stating that the parcel identifier number index is the official index and the date when the change became effective. (1977, c. 589; 1979, c. 700, s. 2.)

Editor's Note. — The 1979 amendment inserted "on index cards" in the first sentence of subsection (c).

§ 161-29.1. Validating acts of assistant and deputy registers of deeds performed before they were sworn into office. — All acts and duties heretofore performed by any and all assistant or deputy registers of deeds, who were appointed but who were not sworn into office or who were sworn into office after their duties commenced, shall be and the same are hereby validated, ratified, and confirmed to all intents and purposes as if performed by assistant or deputy registers of deeds who were theretofore formally appointed and sworn into

office, as required by G.S. 161-6, or as required by any other provision of law. (1977, c. 124, s. 1.)

Editor's Note. — Session Laws 1977, c. 124, s. 3, makes the act effective July 1, 1977.

Session Laws 1977, c. 124, s. 2 provides that the act shall not affect pending litigation.

Chapter 162.

Sheriff.

ARTICLE 1.

The Office.

§ 162-4: Repealed by Session Laws 1979, c. 518, effective May 4, 1979.

ARTICLE 3.

Duties of Sheriff.

§ 162-14. Execute process; penalty for false return.

Editor's Note. — For a survey of 1977 law on torts, see 56 N.C.L. Rev. 1136 (1978).

I. GENERAL CONSIDERATIONS.

Summary, etc. —
In accord with original. See Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

II. NEGLECT OR FAILURE TO MAKE DUE RETURN.

A. In General.

It is clear that the sheriff must be diligent in both the execution and return of process or suffer the $100.00 penalty provided in this section. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

III. FALSE RETURN.

Power of Court to Allow Return to Be Amended. —
A sheriff may move to amend his return of process so as to make it speak the truth even after suit has been brought for the penalty imposed for a false return and though the amendment defeats the plaintiff's right to recover such penalty. In such a case, the sheriff does not as a matter of law have the right to amend his return in order to correct his error, rather, it is within the discretion of the presiding judge to allow such amendments in meritorious cases. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

This section applies to process issued in criminal, as well as civil, proceedings, and Harrell v. Warren, 100 N.C. 259, 6 S.E. 777 (1888) and Martin v. Martin, 50 N.C. 349 (1858) are hereby overruled. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

Restricted to Civil Process. —
Holdings in notes under this catchline in both original and 1977 Supplement reversed in Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

Element Essential to Liability. —
For the sheriff to incur the heavy $500.00 penalty, the return must be false in point of fact, and not false merely as importing, from facts truly stated, a wrong legal conclusion. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

A return untrue in fact is a false return, etc. —
The importance of veracity of quasi-judicial records, led to adoption of the stringent rule that every untrue return, in fact, is a false return within the purview of this section. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

Mistake. —
In accord with 3rd paragraph in original. See Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

Damage to Plaintiff Immaterial. — Under case law and this section, it is immaterial in a

civil action for the $500.00 penalty whether any damage was done to the plaintiff. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

The $500.00 penalty is not intended to be a substitute for damages to an injured party because this section allows "the party aggrieved" to bring a separate action for damages. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

A false inference in a return will render the return false if the facts are omitted from the return. But where the facts underlying the inference or conclusion are truly stated in the return there can be no liability for a false return although the sheriff may still be exposed to a lesser liability for failing to execute the writ or for not making a proper and legal return. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

To subject one to the heavy penalty of the statute, the falseness must be stated as a fact and not merely by way of inference from facts. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

Illustrations. —

The conclusion found in a return that the defendant "after a due and diligent search is not to be found" without more, if untrue, may be the basis for a finding of a false return. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

A sheriff can be liable under this section for a return of criminal process which states only that a defendant "after due and diligent search is not to be found," when a jury finds, upon sufficient competent evidence, that the return is false. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

§ 162-22. Custody of jail.

Stated in State v. Jones, 41 N.C. App. 189, 254 S.E.2d 234 (1979).

ARTICLE 4.

County Prisoners.

§ 162-41: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 162-42. Counties and towns may hire out certain prisoners. — The board of commissioners of the several counties, within their respective jurisdictions, or such other county authorities therein as may be established, and the mayor and intendant of the several cities and towns of the State, have power to provide under such rules and regulations as they may deem best for the employment on the public streets, public highways, public works, or other labor for individuals or corporations, of all persons imprisoned in the jails of their respective counties, cities and towns, upon conviction of any crime or misdemeanor, or who may be committed to jail for failure to enter into bond for keeping the peace or for good behavior, and who fail to pay all the costs which they are adjudged to pay, or to give good and sufficient security therefor: Provided, such prisoner or convict shall not be detained beyond the time fixed by the judgment of the court. The amount realized from hiring out such persons shall be credited to them for the

fine and bill of costs in all cases of conviction. (1866-7, c. 30; 1872-3, c. 174, s. 10; 1874-5, c. 113; 1876-7, c. 196, s. 1; 1879, c. 218; Code, s. 3448; Rev., s. 1352; C.S., s. 1356; 1973, c. 822, s. 3; 1977, c. 711, s. 31.)

Editor's Note. — The 1977 amendment, effective July 1, 1978, deleted the former third sentence, which provided: "It is unlawful to farm out any such convicted person who may be imprisoned for the nonpayment of a fine, or as punishment imposed for the offense of which he may have been convicted, unless the court before whom the trial is had shall in its judgment so authorize."

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 162-45: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 162-46. Deductions from sentence allowed for good behavior. — When a defendant has been sentenced to a facility other than one maintained by the Department of Correction, and has faithfully performed the duties assigned to him during his term of sentence, he is entitled to a deduction from the time of his sentence of five days for each month, and he shall be discharged when he has served his sentence, less the number of days he may be entitled to have deducted. The authorities having him in charge shall be the sole judges as to the faithful performance of the duties assigned to him. Should he escape or attempt to escape, he shall forfeit any deduction he may have been entitled to prior to that time. (1913, c. 167, s. 1; C.S., s. 1360; 1973, c. 822, s. 3; 1977, c. 711, s. 32.)

Editor's Note. — The 1977 amendment, effective July 1, 1978, rewrote this section.

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Section Repealed Effective July 1, 1980. — This section is repealed by Session Laws 1979, c. 760, s. 4, effective July 1, 1980.

Session Laws 1979, c. 760, s. 6, provides: "This act shall become effective on July 1, 1980, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

§ 162-47: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§ 162-49: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

Chapter 162A.

Water and Sewer Systems.

ARTICLE 1.

Water and Sewer Authorities.

§ 162A-1. Title.

Editor's Note. — For a survey of 1977 law on property, see 56 N.C.L. Rev. 1111 (1978).

§ 162A-2. Definitions. — As used in this Article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(9) The term "sewage disposal system" shall mean and shall include any plant, system, facility, or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage (including industrial wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resources), or any integral part thereof, including but not limited to septic tank systems or other on-site collection or disposal facilities or systems, treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof.

(1979, c. 619, s. 8.)

Editor's Note. — The 1979 amendment inserted "septic tank systems or other on-site collection or disposal facilities or systems" near the middle of subdivision (9).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (9) are set out.

§ 162A-6. Powers of authority generally. — Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each such authority is, subject to the provisions of G.S. 162A-7, hereby authorized and empowered:

(14a) To make special assessments against benefited property within the area served or to be served by the authority for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Chapter 153A, Article 9, except that the language appearing in G.S. 153A-185 reading as follows: "A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project," shall not apply to assessments levied by Water and Sewer Authorities established pursuant to Chapter 162A, Article 1, of the General Statutes. For the purposes of this paragraph, references in Chapter 153A, Article 9, to the "county," the "board of county commissioners," "the board" or a specific county official or employee are deemed to refer, respectively, to the authority and to the official or employee of the Authority who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term "county tax collector" wherever used in G.S. 153A-195 and 153A-196, shall mean the Executive Director or other administrative officer designated by the Authority to perform the functions described in said sections of the statute.

(1979, c. 804.)

Editor's Note. — The 1979 amendment added subdivision (14a).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (14a) are set out.

The power of eminent domain under subdivision (10) is subject to the provisions of § 162A-7(a). Orange Water & Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593 (1977).

A water and sewer authority's right of eminent domain is not dormant before certification under § 162A-7. Because it has the power of eminent domain possessed by cities, it may enter and survey prior to the institution of an eminent domain proceeding. Orange Water & Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593 (1977).

The procedures for eminent domain governing cities and counties apply to water and sewer authorities created pursuant to this Article. Orange Water & Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593 (1977).

With additional requirement that a certificate of authorization be obtained before an action in eminent domain is commenced. Orange Water & Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593 (1977).

Authority to Enter Land Prior to Institution of Eminent Domain Proceedings. — A water and sewer authority, having the power of eminent domain possessed by cities, may enter lands for the purpose of making surveys prior to the institution of eminent domain proceedings. Orange Water & Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593 (1977).

§ 162A-7. Prerequisites to acquisition of water, etc., by eminent domain.

The procedures for eminent domain governing cities and counties apply to water and sewer authorities created pursuant to this Article. Orange Water & Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593 (1977).

With additional requirement that a certificate of authorization be obtained before an action in eminent domain is commenced. Orange Water & Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593 (1977).

A water and sewer authority's right of eminent domain is not dormant before certification under this section. Because it has the power of eminent domain possessed by cities, it may enter and survey prior to the institution of an eminent domain proceeding. Orange Water & Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593 (1977).

A water and sewer authority, having the power of eminent domain possessed by cities, may enter lands for the purpose of making surveys prior to the institution of eminent domain proceedings. Orange Water & Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593 (1977).

ARTICLE 2.

Regional Water Supply Planning.

§ 162A-23. State role and functions relating to local and regional water supply planning.

Editor's Note. — Session Laws 1977, c. 771, s. 4, changes the title of the Department of Natural and Economic Resources to the Department of Natural Resources and Community Development.

§ 162A-24. Regional Water Supply Planning Revolving Fund established; conditions and procedures.

Editor's Note. — Session Laws 1977, c. 771, s. 4, changes the title of the Department of Natural and Economic Resources to the Department of Natural Resources and Community Development.

§ 162A-25. Construction of Article.

Editor's Note. — Session Laws 1977, c. 771, s. 4, changes the title of the Department of Natural and Economic Resources to the Department of Natural Resources and Community Development.

ARTICLE 3.

Regional Sewage Disposal Planning.

§ 162A-29. Regional Sewage Disposal Planning Revolving Fund established; conditions and procedures.

Editor's Note. — Session Laws 1977, c. 771, s. 4, changes the title of the Department of Natural and Economic Resources to the Department of Natural Resources and Community Development.

ARTICLE 4.

Metropolitan Water Districts.

§ 162A-32. Definitions; description of boundaries. — (a) As used in this Article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) "Board of commissioners" or "commissioners" shall mean the duly elected board of commissioners of the county in which a metropolitan water district shall be created under the provisions of this Article.

(2) "City council" or "council" shall mean the duly elected city council of any municipality located within the State.

(3) "Cost" as applied to a water system or sewerage system shall mean the cost of acquiring, constructing, reconstructing, improving, extending, enlarging, repairing and equipping any such system, and shall include the cost of all labor and materials, machinery and equipment, lands, property, rights, easements and franchises, plans and specifications, surveys and estimates of cost and of revenues, and planning, engineering, financial advice, and legal services, financing charges, interest prior to and during construction and, if deemed advisable by a district board, for one year after the estimated date of completion of construction, and all other expenses necessary or incident to determining the feasibility or practicability of any such undertaking, administrative expense and such other expenses, including reasonable provision for working capital and a reserve for debt service, as may be necessary or incident to the financing herein authorized, and may also include any obligation or expense incurred by a district or by any political subdivision prior to the issuance of bonds under the provisions of this Article in connection with any such undertaking or any of the foregoing items of cost.

(4) "District" shall mean a metropolitan water district created under the provisions of this Article.

(5) "District board" shall mean the district board of the metropolitan water district created under the provisions of this Article.

(6) "General obligation bonds" shall mean bonds of a metropolitan water district for the payment of which and the interest thereon all the taxable property within said district is subject to the levy of an ad valorem tax without limitation of rate or amount.

(7) "Governing body" shall mean the board, board of trustees, commission, board of commissioners, council or other body, by whatever name it may be known, of a political subdivision including, but without limitation, other water or sewer districts or the trustees thereof within the State of North Carolina in which the general legislative powers thereof are vested.

(8) "Person" shall mean any and all persons including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies or private or public corporations organized and existing under the laws of the State or any other state or county.

(9) "Political subdivision" shall mean any county, city, town, incorporated village, sanitary district, water district, sewer district, special purpose district or other political subdivision or public corporation of this State now or hereafter created or established.

(10) "Revenue bonds" shall mean bonds the principal of and the interest on which are payable solely from revenues of a water system or systems or a sewerage system or systems or both owned or operated by a

metropolitan water district created under the provisions of this Article.

(11) "Revenues" shall mean all moneys received by a metropolitan water district from, in connection with, or as a result of its ownership or control or operation of a water system or systems or a sewerage system or systems, or both, including, without limitation and as deemed advisable by the district board, moneys received from the United States of America or any agency thereof, pursuant to an agreement with the district board pertaining to the water system or the sewerage system or both.

(12) "Sewerage system" shall embrace sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems and any part or parts thereof, either within or without the limits of a district, all property, rights, easements and franchises relating thereto, and any and all buildings and other structures deemed necessary or useful by a district board in connection with the operation or maintenance thereof.

(13) "Sewers" shall mean any mains, pipes and laterals, including pumping stations for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system, and all property, rights, easements, and franchises related thereto and deemed necessary or convenient by a district board for the operation and maintenance thereof.

(14) "Water distribution system" shall include aqueducts, mains, laterals, pumping stations, distributing reservoirs, standpipes, tanks, hydrants, services, meters, valves, and all necessary appurtenances, and all property, rights, easements, and franchises related thereto and deemed necessary or convenient by a district board for the operation and maintenance thereof.

(15) "Water system" shall mean and include all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, and any integral part thereof, including but not limited to water supply systems, water distribution systems, sources of water supply including lakes, reservoirs and wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by a district board for the operation or maintenance thereof.

(16) "Water treatment or purification plant" shall mean any plant, system, facility, or property, used or useful or having the present capacity for future use in connection with the treatment of purification of water, or any integral part thereof; and all necessary appurtenances or equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by a district board for the operation thereof.

(1979, c. 619, s. 9.)

Editor's Note. — The 1979 amendment substituted "sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems and" for "both sewage and sewage disposal systems and" near the beginning of subdivision (12) of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 162A-54. Rights-of-way and easements in streets and highways. — A right-of-way or easement in, along, or across any State highway system road,

or street, and along or across any city or town street within a district is hereby granted to a district in case such right-of-way is found by the district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway system, road, street, or property shall be done in accordance with the rules and regulations and any reasonable requirements of the Department of Transportation, and any work done in, along, or across any municipal street or property shall be done in accordance with any reasonable requirements of the municipal governing body. (1971, c. 815, s. 24; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in the second sentence.

§ 162A-56. Advances by political subdivisions for preliminary expenses of districts.

Editor's Note. — This section is erroneously numbered § 162A-45 in the Replacement Volume.

ARTICLE 5.

Metropolitan Sewerage Districts.

§ 162A-65. Definitions; description of boundaries. — (a) Definitions. — As used in this Article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The term "board of commissioners" shall mean the board of commissioners of the county in which a metropolitan sewerage district shall be created under the provisions of this Article.

(2) The word "cost" as applied to a sewerage system shall mean the cost of acquiring, constructing, reconstructing, improving, extending, enlarging, repairing and equipping any such system, and shall include the cost of all labor and materials, machinery and equipment, lands, property, rights, easements and franchises, plans and specifications, surveys and estimates of cost and of revenues, and engineering and legal services, financing charges, interest prior to and during construction and, if deemed advisable by the district board, for one year after the estimated date of completion of construction, and all other expenses necessary or incident to determining the feasibility or practicability of any such undertaking, administrative expense and such other expenses, including reasonable provision for working capital and a reserve for interest, as may be necessary or incident to the financing herein authorized, and may also include any obligation or expense incurred by the district or by any political subdivision prior to the issuance of bonds under the provisions of this Article in connection with any such undertaking or any of the foregoing items of cost.

(3) The word "district" shall mean a metropolitan sewerage district created under the provisions of this Article.

(4) The term "district board" shall mean a sewerage district board established under the provisions of this Article as the governing body of a district or, if such sewerage district board shall be abolished, any board, body, or commission succeeding to the principal functions thereof or upon which the powers given by this Article to the sewerage district board shall be given by law.

(5) The term "general obligation bonds" shall mean bonds of a district for the payment of which and the interest thereon all the taxable property within such district is subject to the levy of an ad valorem tax without limitation of rate or amount.

(6) The term "governing body" shall mean the board, commission, council or other body, by whatever name it may be known, of a political subdivision in which the general legislative powers thereof are vested, including, but without limitation, as to any political subdivision other than the county, the board of commissioners for the county when the general legislative powers of such political subdivision are exercised by such board.

(7) The word "person" shall mean any and all persons including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or county.

(8) The term "political subdivision" shall mean any county, city, town, incorporated village, sanitary district, water district, sewer district, special purpose district or other political subdivision or public corporation of this State now or hereafter created or established.

(9) The term "revenue bonds" shall mean bonds the principal of and the interest on which are payable solely from revenues of a sewerage system or systems.

(9a) The word "revenues" shall mean all moneys received by a district from, in connection with or as a result of its ownership or operation of a sewerage system, including, without limitation and if deemed advisable by the district board, moneys received from the United States of America, or any agency thereof, pursuant to an agreement with the district board pertaining to the sewerage system.

(10) The word "sewage" shall mean the water-carried wastes created in and carried or to be carried away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public buildings, together with such surface or ground water or household and industrial wastes as may be present.

(11) The term "sewage disposal system" shall mean any plant, system, facility or property, either within or without the limits of the district, used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage, or any integral part thereof, including but not limited to septic tank systems or other on-site collection or disposal facilities or systems, treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the district board for the operation thereof.

(12) The term "sewerage system" shall embrace both sewers and sewage disposal systems and any part or parts thereof, either within or without the limits of the district, all property, rights, easements and franchises relating thereto, and any and all buildings and other structures necessary or useful in connection with the ownership, operation or maintenance thereof.

(13) The word "sewers" shall mean any mains, pipes and laterals, including pumping stations, either within or without the limits of the district, for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system.

(1979, c. 619, s. 10.)

Editor's Note. — The 1979 amendment inserted "septic tank systems or other on-site collection or disposal facilities or systems" near the middle of subdivision (11) of subsection (a). As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 162A-66. Procedure for creation; resolutions and petitions for creation; notice to and action by the Environmental Management Commission; notice and public hearing; resolutions creating districts; actions to set aside proceedings. — Any two or more political subdivisions in one or more counties, or any political subdivision or subdivisions and any unincorporated area or areas located within one or more counties, which political subdivisions or areas need not be contiguous, may petition for the creation of a metropolitan sewerage district under the provisions of this Article by filing with the board or boards of commissioners of the county or counties within which the proposed district will lie:

(1) A resolution of the governing body of each such political subdivision stating the necessity for the creation of a metropolitan sewerage district under the provisions of this Article in order to preserve and promote the public health and welfare within the area of the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in said resolution, and

(2) If any unincorporated area is to be included in such district, a petition, signed by not less than fifty-one per centum (51%) of the qualified voters resident within such area, defining the boundaries of such area, stating the necessity for the creation of a metropolitan sewerage district under the provisions of this Article in order to preserve and promote the public health and welfare within the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in such petition for such district.

Upon the receipt of such resolutions and petitions requesting the creation of a metropolitan sewerage district, the board or boards of commissioners, through the chairman thereof, shall notify the North Carolina Environmental Management Commission of the receipt of such resolutions and petitions, and shall request that a representative of the Environmental Management Commission hold a joint public hearing with the board or boards of commissioners concerning the creation of the proposed metropolitan sewerage district. The chairman of the Environmental Management Commission and the chairman or chairmen of the board or boards of commissioners shall name a time and place within the proposed district at which the public hearing shall be held; provided, however, that where a proposed district lies within more than one county, the public hearing shall be held in the county within which the greater portion of the proposed district lies. The chairman or chairmen of the board or boards of commissioners shall give prior notice of such hearing by posting a notice at least 30 days prior to the hearing at the courthouse of the county or counties within which the district will lie and also by publication at least once a week for four successive weeks in a newspaper having general circulation in the proposed district, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the creation of such metropolitan sewerage district cannot be concluded at such hearing, such hearing may be continued to a time and place within the proposed district determined by the board or boards of commissioners with the concurrence of the representative of the Environmental Management Commission.

If, after such hearing, the Environmental Management Commission and the board or boards of commissioners shall deem it advisable to comply with the request of such resolutions and petitions, and determine that the creation of a metropolitan sewerage district would preserve and promote the public health and welfare in the area or areas described in such resolutions and petitions, the

Environmental Management Commission shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a metropolitan sewerage district under the name and style of ". . . . . Metropolitan Sewerage District of . . . . . [County] [Counties]"; provided, that the Environmental Management Commission may make minor deviations in the boundaries from those prescribed in the resolutions and petitions upon determination by the Environmental Management Commission that such deviations are advisable in the interest of the public health, and provided no such district shall include any political subdivision which has not petitioned for inclusion as provided in this Article.

The Environmental Management Commission shall cause copies of the resolution creating the metropolitan sewerage district to be sent to the board or boards of commissioners and to the governing body of each political subdivision included in the district. The board or boards of commissioners shall cause a copy of such resolution of the Environmental Management Commission to be published in a newspaper circulating within the district once in each of two successive weeks, and a notice substantially in the following form shall be published with such resolution:

The foregoing resolution was passed by the North Carolina Environmental Management Commission on the . . . . . day of . . . . . ., 19. . . ., and was first published on the . . . . . day of . . . . . ., 19. . . .

Any action or proceeding questioning the validity of said resolution or the creation of the metropolitan sewerage district therein described must be commenced within 30 days after the first publication of said resolution.

. . . . . .

Clerk, Board of Commissioners for

. . . . . County.

Any action or proceeding in any court to set aside a resolution creating a metropolitan sewerage district, or to obtain any other relief upon the ground that such resolution or any proceeding or action taken with respect to the creation of such district is invalid, must be commenced within 30 days after the first publication of the resolution and said notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the creation of the metropolitan sewerage district therein described shall be asserted, nor shall the validity of the resolution or of the creation of such metropolitan sewerage district be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1961, c. 795, s. 3; 1973, c. 512, s. 1; c. 822, s. 4; c. 1262, s. 23; 1977, c. 764, s. 1.)

Editor's Note. — The 1977 amendment substituted "qualified voters" for "freeholders" in subdivision (2).

§ 162A-67. District board; composition, appointment, terms, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members.

(d) District Board Procedures. — Each member of the district board, before entering upon his duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of his office; and a record of each such oath shall be filed with the clerk or clerks of the board or boards of commissioners.

The district board shall elect one of its members as chairman and another as vice-chairman and shall appoint a secretary and a treasurer who may, but need not, be members of the district board. The officers [offices] of secretary and

treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the district board.

The district board shall meet regularly at such places and dates as are determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of such meeting. A majority of the members of the district board shall constitute a quorum, and the affirmative vote of a majority of the members of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member, including the chairman, shall be entitled to vote on any question. The members of the district board may receive compensation in an amount to be determined by the board, but not to exceed twenty-five dollars ($25.00) for each meeting attended. In addition, the board may increase its compensation above twenty-five dollars ($25.00) per meeting, if the increase is approved by the governing board of each political subdivision that appoints members to the board. The members of the district board may also be reimbursed the amount of actual expenses incurred by them in the performance of their duties. (1961, c. 795, s. 4; 1963, c. 471; 1973, c. 512, s. 2; c. 822, s. 4; c. 1262, s. 23; 1979, c. 471.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "twenty-five dollars ($25.00)" for "ten dollars ($10.00)" near the end of the seventh sentence of the third paragraph of subsection (d) and added the eighth and ninth sentences of that paragraph.

As only subsection (d) was changed by the amendment, the rest of the section is not set out.

§ 162A-68. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions to set aside proceedings. — If, at any time subsequent to the creation of a district, there shall be filed with the district board a resolution of the governing body of a political subdivision, or a petition, signed by not less than fifty-one per centum (51%) of the qualified voters resident within an unincorporated area, requesting inclusion in the district of such political subdivision or unincorporated area, and if the district board shall favor the inclusion in the district of such political subdivision or unincorporated area, the district board shall notify the board or boards of commissioners of the county or counties within which the district lies and shall file with the board or boards of commissioners and with the Environmental Management Commission a report setting forth the plans of the district for extending sewerage service to the political subdivision or unincorporated area. The report shall include:

(1) A map or maps of the district and adjacent territory showing the present and proposed boundaries of the district; the existing major sewer interceptors and outfalls; and the proposed extension of such interceptors and outfalls.

(2) A statement setting forth the plans of the district for extending sewerage services to the territory proposed to be included, which plans shall:

a. Provide for extending sewerage service to the territory included on substantially the same basis and in the same manner as such services are provided within the rest of the district prior to inclusion of the new territory.

b. Set forth a proposed time schedule for extending sewerage service to the territory proposed to be included.

c. Set forth the estimated cost of extending sewerage service to the territory proposed to be included; the method by which the district

proposes to finance the extension; the outstanding existing indebtedness of the district, if any; and the valuation of assessable property within the district and within the territory proposed to be included.

d. Contain a declaration of intent of the district board to conform with the plans set forth in the report in extending sewerage services to the territory proposed to be included; and a certification by the chairman of the district board to the effect that the matters and things set forth in the report are true to his knowledge or belief.

The board or boards of commissioners, through the chairmen thereof, shall thereupon request that a representative of the Environmental Management Commission hold a joint public meeting with the board or boards of commissioners concerning the inclusion of such political subdivision or unincorporated area in the district. The chairman of the Environmental Management Commission and the chairman or chairmen of the board or boards of commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman or chairmen of the board or boards of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county or counties at least 30 days prior to the hearing and also by publication at least once a week for four successive weeks in a newspaper having general circulation in the district and in any such political subdivision or unincorporated area, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the inclusion of such political subdivision or unincorporated area cannot be included at such hearing, such hearing may be continued to a time and place within the district determined by the board or boards of commissioners with the concurrence of the representative of the Environmental Management Commission.

If, after such hearing, the Environmental Management Commission and the board or boards of commissioners shall determine that the inclusion of such political subdivision or unincorporated area in the district will preserve and promote the public health and welfare, the Environmental Management Commission shall adopt a resolution to that effect, defining the boundaries of the district, including such political subdivision or unincorporated area which has filed a resolution or petition as provided for in this section, and declaring such political subdivision or unincorporated area to be included in the district.

If, at or prior to such public hearing, there shall be filed with the district board a petition, signed by not less than ten per centum (10%) of the qualified voters residing in the district, requesting an election to be held therein on the question of including any such political subdivision or unincorporated area, the district board shall certify a copy of such petition to the board or boards of commissioners, and the board or boards of commissioners shall request the county board or boards of elections to submit such question to the qualified voters within the district in accordance with the applicable provisions of Chapter 163 of the General Statutes; provided, that the election shall not be held unless the Environmental Management Commission has adopted a resolution approving the inclusion of the political subdivision or unincorporated area in the district.

Notice of such election, which shall contain a statement of the boundaries of the territory proposed to be included in the district and the boundaries of the district after inclusion, shall be given by publication once a week for three successive weeks in a newspaper or newspapers having general circulation within the district, the first publication to be at least 30 days prior to the election.

Notice of the resolution of the Environmental Management Commission, or in the event that an election pursuant to this section is held, notice of the results of the election, approving the inclusion of the political subdivision or unincorporated area within the district shall be published as provided in G.S. 162A-66.

Any action or proceeding in any court to set aside a resolution of the Environmental Management Commission or an election approving the inclusion of a political subdivision or unincorporated area within a district or to obtain any other relief upon the ground that such resolution or election or any proceeding or action taken with respect to the inclusion of the political subdivision or unincorporated area within the district is invalid, must be commenced within 30 days after the first publication of the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the election or the inclusion of the political subdivision or unincorporated area in the district shall be asserted, nor shall the validity of the resolution or the election or the inclusion of the political subdivision or unincorporated area be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

Any political subdivision or unincorporated area included within an existing district by resolution of the Environmental Management Commission or by such resolution and election shall be subject to all debts of the district.

The annexation by a city or town within a metropolitan sewerage district of an area lying outside such district shall not be construed as the inclusion within the district of an additional political subdivision or unincorporated area within the meaning of the provisions of this section; but any such areas so annexed shall become a part of the district and shall be subject to all debts thereof.

Immediately following the inclusion of any additional political subdivision or unincorporated area within an existing district, members representing such additional political subdivision or unincorporated area shall be appointed to the district board in the manner provided in G.S. 162A-67. The terms of office of the members first appointed to represent such additional subdivision or area may be varied for a period not to exceed six months from the terms provided for in G.S. 162A-67, so that the appointment of successors to such members may more nearly coincide with the appointment of successors to members of the existing board; and all successor members shall be appointed for the terms provided for in G.S. 162A-67. (1961, c. 795, s. 5; 1973, c. 512, s. 3; c. 822, s. 4; c. 1262, s. 23; 1977, c. 764, s. 2.)

Editor's Note. — The 1977 amendment substituted "qualified voters" for "freeholders" near the middle of the first sentence of the first paragraph and near the beginning of the fourth paragraph.

§ 162A-74. Rights-of-way and easements in streets and highways. — A right-of-way or easement in, along, or across any State highway system, road, or street, and along or across any city or town street within a district is hereby granted to a district in case such right-of-way is found by the district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway system, road, street, or property shall be done in accordance with the rules and regulations and any reasonable requirements of the Department of Transportation, and any work done in, along, or across any municipal street or property shall be done in accordance with any reasonable requirements of the municipal governing body. (1961, c. 795, s. 24; 1973, c. 507, s. 5; c. 822, s. 4; 1977, c. 464, s. 34.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in the second sentence.

§§ 162A-81 to 162A-85: Reserved for future codification purposes.

ARTICLE 6.

County Water and Sewer Districts.

§ 162A-86. Formation of district; hearing. — (a) The board of commissioners of any county may create a county water and sewer district.

(b) Before creating such a district, the board of commissioners shall hold a public hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall set forth a description of the territory to be included within the proposed district. The notice shall be published once a week for three weeks in a newspaper that circulates in the proposed district and in addition shall be posted in at least three public places in the district. The notice shall be posted and published the first time not less than 20 days before the hearing.

(c) At the public hearing, the commissioners shall hear all interested persons and may adjourn the hearing from time to time. (1977, c. 466, s. 1; 1979, c. 624, ss. 2, 3.)

Editor's Note. — The 1979 amendment rewrote subsection (a), and added "and shall set forth a description of the territory to be included within the proposed district" at the end of the second sentence of subsection (b).

Session Laws 1979, c. 624, ss. 6, 7, provide:

"Sec. 6. Nothing in this act is intended to affect in any way any public or private rights or interests (i) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law amended by this act or (ii) derived from or which might be sustained or preserved in reliance upon action heretofore taken, including the adoption of orders, ordinances, or resolutions, pursuant to or within the scope of any provision of law amended by this act.

"Sec. 7. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act [May 23, 1979]."

§ 162A-87. Creation of district; standards; limitation of actions. — (a) Following the public hearing, the board of commissioners may, by resolution, create a county water and sewer district if the board finds that:

(1) There is a demonstrable need for providing in the district water services, or sewer services, or both;

(2) The residents of all the territory to be included in the district will benefit from the district's creation; and

(3) It is economically feasible to provide the proposed service or services in the district without unreasonable or burdensome annual tax levies.

Territory lying within the corporate limits of a city or town may not be included in the district unless the governing body of the city or town agrees by resolution to such inclusion. Otherwise, the board of commissioners may define as the district all or any portion of the territory described in the notice of the public hearing.

(b) Upon adoption of a resolution creating a county water and sewer district, the board of commissioners shall cause the resolution to be published once in each of two successive weeks in the newspaper in which the notices of the hearing were published. In addition, the commissioners shall cause to be published with the resolution a notice in substantially the following form:

"The foregoing resolution was adopted by the . . . . . County Board of Commissioners on . . . . . and was first published on . . . . . .

Any action or proceeding questioning the validity of this resolution or the creation of the . . . . . Water and Sewer District of . . . . . County

or the inclusion in the district of any of the territory described in the resolution must be commenced within 30 days after the first publication of the resolution.

. . . . . .

Clerk, ... County Board of Commissioners"

Any action or proceeding in any court to set aside a resolution creating a county water and sewer district, or questioning the validity of such a resolution, the creation of such a district, or the inclusion in such a district of any of the territory described in the resolution creating the district must be commenced within 30 days after the first publication of the resolution and notice. After the expiration of this period of limitation, no right of action or defense founded upon the invalidity of the resolution, the creation of the district, or the inclusion of any territory in the district may be asserted, nor may the validity of the resolution, the creation of the district, or the inclusion of the territory be open to question in any court upon any ground whatever, except in an action or proceeding commenced within that period. (1977, c. 466, s. 1; 1979, c. 624, s. 4.)

Editor's Note. — The 1979 amendment substituted "notice of the public hearing" for "petition presented to it" at the end of the second sentence of the last paragraph of subsection (a).

Session Laws 1979, c. 624, ss. 6, 7, provide:

"Sec. 6. Nothing in this act is intended to affect in any way any public or private rights or interests (i) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law amended by this act or (ii) derived from or which might be sustained or preserved in reliance upon action heretofore taken, including the adoption of orders, ordinances, or resolutions, pursuant to or within the scope of any provision of law amended by this act.

"Sec. 7. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act [May 23, 1979]."

§ 162A-88. District is a municipal corporation. — The inhabitants of a county water and sewer district created pursuant to this Article are a body corporate and politic by the name specified by the board of commissioners. Under that name they are vested with all the property and rights of property belonging to the corporation; have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, bequeathed, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; may have a common seal and alter and renew it at will; may establish, revise and collect rates, fees or other charges and penalties for the use of or the services furnished or to be furnished by any sanitary sewer system, water system or sanitary sewer and water system of the district; and may exercise those powers conferred on them by this Article. (1977, c. 466, s. 1; 1979, c. 624, s. 5.)

Editor's Note. — The 1979 amendment inserted "may establish, revise and collect rates, fees or other charges and penalties for the use of or the services furnished or to be furnished by any sanitary sewer system, water system or sanitary sewer and water system of the district" near the end of the second sentence.

Session Laws 1979, c. 624, ss. 6, 7, provide:

"Sec. 6. Nothing in this act is intended to affect in any way any public or private rights or interests (i) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law amended by this act or (ii) derived from or which might be sustained or preserved in reliance upon action heretofore taken, including the adoption of orders, ordinances, or resolutions, pursuant to or within the scope of any provision of law amended by this act.

"Sec. 7. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act [May 23, 1979]."

§ 162A-89. Governing body of district; powers. — The board of commissioners of the county in which a county water and sewer district is created is the governing body of the district. (1977, c. 466, s. 1.)

§ 162A-89.1. Eminent domain power authorized. — A county water and sewer district shall have the power of eminent domain, to be exercised in accordance with Article 9 of Chapter 136, over the acquisition of any improved or unimproved lands or rights in land. (1977, c. 466, s. 1.)

§ 162A-90. Bonds and notes authorized. — A county water and sewer district may from time to time issue general obligation and revenue bonds and bond anticipation notes pursuant to the Local Government Finance Act, for the purposes of providing sanitary sewer systems or water systems or both.

A county water and sewer district may from time to time issue tax and revenue anticipation notes pursuant to Chapter 159, Article 9, Part 2. (1977, c. 466, s. 1.)

§ 162A-91. Taxes authorized. — The governing body of a county water and sewer district may levy property taxes within the district in order to finance the operation and maintenance of the district's water system or sewer system or both and in order to finance debt service on any general obligation bonds or notes issued by the district. No voter approval is necessary in order for such taxes to be levied. (1977, c. 466, s. 1.)

§ 162A-92. Special assessments authorized. — A county water and sewer district may make special assessments against benefited property within the district for all or part of the costs of:

(1) Constructing, reconstructing, extending, or otherwise building or improving water systems;

(2) Constructing, reconstructing, extending, or otherwise building or improving sewage disposal systems.

A district shall exercise the authority granted by this section according to the provisions of Chapter 153A, Article 9. For the purposes of this section references in that Article to the "county" and the "board of commissioners" are deemed to refer, respectively, to the "district" and the "governing body of the district." (1977, c. 466, s. 1.)

Chapter 163.

Elections and Election Laws.

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

Article 12.

Precincts and Voting Places.

Sec.

163-128. Election precincts and voting places established or altered.

Article 13.

General Instructions.

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Article 15.

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Article 18.

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163-211. Compensation of presidential electors.

Article 18A.

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Sec.

163-213.2. Primary to be held; date; qualifications and registration of voters.
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Article 19.

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SUBCHAPTER VII. ABSENTEE VOTING.

Article 20.

Absentee Ballot.

163-226. Who may vote an absentee ballot.
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SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

ARTICLE 1.

Time of Primaries and Elections.

§ 163-1. Time of regular elections and primaries.

(b) On Tuesday next after the first Monday in May preceding each general election to be held in November for the officers referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices.

(c) On Tuesday next after the first Monday in November in the year 1968, and every four years thereafter, or on such days as the Congress of the United States shall direct, an election shall be held in all of the election precincts of the State for the election of electors of President and Vice-President of the United States. The number of electors to be chosen shall be equal to the number of Senators and Representatives in Congress to which this State may be entitled. Presidential electors shall not be nominated by primary election; instead, they shall be nominated in a State convention of each political party as defined in G.S. 163-96 unless otherwise provided by the plan of organization of the political party. One presidential elector shall be nominated from each congressional district and two from the state-at-large.

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Lieutenant Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Secretary of State	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Auditor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Treasurer	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Superintendent of Public Instruction	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Attorney General	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Agriculture	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Labor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Commissioner of Insurance	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms last for four years	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms are not specified by law	State	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from first day of January next after election
State Senator	Senatorial district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Member of State House of Representatives	Representative district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Justices and Judges of the Appellate Division	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the superior courts	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the district courts	District court district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election

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OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
District Attorney	District Attorney district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from first day of January next after election
Members of House of Representatives of the Congress of the United States	Congressional district, except as modified by G.S. 163-104	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
United States Senators	State	At the regular election immediately preceding the termination of each regular term	Six years
County commissioners	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Two years, from the first Monday in December next after election
Clerk of superior court	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Register of deeds	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Sheriff	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Coroner	County	At the regular election for members of the General Assembly immediately preceding the termination of a regular term	Four years, from the first Monday in December next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
County treasurer (in counties in which elected)	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
All other county officers to be elected by the people	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election

(Const., art. 4, s. 24; 1901, c. 89, ss. 1, 2, 3, 4, 73, 74, 77; Rev., ss. 4293, 4294, 4296, 4297, 4298, 4299; 1915, c. 101, s. 1; 1917, c. 218; C. S., ss. 5914, 5915, 5917, 5918, 5919, 5920, 6018; 1935, c. 362; 1939, c. 196; 1943, c. 134, s. 4; 1947, c. 505, s. 1; 1951, c. 1009, s. 2; 1953, c. 1191, s. 1; 1967, c. 775, s. 1; cc. 1264, 1271; 1969, c. 44, s. 80; 1971, c. 170; 1973, c. 793, s. 93; 1977, c. 265, s. 1; c. 661, s. 1.)

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(Const., art. 4, s. 24; 1901, c. 89, ss. 1, 2, 3, 4, 73, 74, 77; Rev., ss. 4293, 4294, 4296, 4297, 4298, 4299; 1915, c. 101, s. 1; 1917, c. 218; C. S., ss. 5914, 5915, 5917, 5918, 5919, 5920, 6018; 1935, c. 362; 1939, c. 196; 1943, c. 134, s. 4; 1947, c. 505, s. 1; 1951, c. 1009, s. 2; 1953, c. 1191, s. 1; 1967, c. 775, s. 1; cc. 1264, 1271; 1969, c. 44, s. 80; 1971, c. 170; 1973, c. 793, s. 93; 1977, c. 265, s. 1; c. 661, s. 1.)

Editor's Note. —

The first 1977 amendment, in subsection (c), substituted "District Attorney" for "Solicitors" in the list of offices and "District Attorney district" for "Solicitorial district" in the list of jurisdictions.

The second 1977 amendment substituted "On Tuesday next after the first Monday in May" for "On the third Tuesday in August" at the beginning of subsection (b).

As subsection (a) was not changed by the amendments, only subsections (b) and (c) are set out.

For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

ARTICLE 2.

Time of Elections to Fill Vacancies.

§ 163-9. Filling vacancies in State and district judicial offices. — Vacancies occurring in the offices of Justice of the Supreme Court, judge of the Court of Appeals, and judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee shall hold his place until the next election for members of the General Assembly that is held more than 30 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office: Provided, that when the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Instead, such a vacancy shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district in which the vacancy occurs. If the district bar fails to submit nominations within four weeks from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C.S., s. 5920; 1967, c. 775, s. 1; 1969, c. 44, s. 81; 1979, c. 494.)

Editor's Note. — The 1979 amendment substituted "four" for "two" near the middle of the third sentence of the second paragraph.

§ 163-10. Filling vacancy in office of the district attorney. — Any vacancy occurring in the office of district attorney for causes other than expiration of term shall be filled by appointment of the Governor. An appointee shall hold his place until the next election for members of the General Assembly that is held more than 30 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office: Provided, that when the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C.S., s. 5920; 1967, c. 775, s. 1; 1973, c. 47, s. 2; 1977, c. 265, s. 2.)

Editor's Note. — The 1973 amendment substituted "district attorney" for "solicitor" in the first sentence.

The 1977 amendment substituted "district attorney" for "solicitor" in the first sentence.

SUBCHAPTER II. ELECTION OFFICERS.

ARTICLE 3.

State Board of Elections.

§ 163-20. Meetings of Board; quorum; minutes.

Cited in Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-22. Powers and duties of State Board of Elections.

(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The Board shall furnish to the county and municipal boards of elections the registration application forms required pursuant to G.S. 163-67. The State Board of Elections shall direct the county boards of elections to purchase a sufficient quantity of all forms attendant to the registration and elections process. In addition, the State Board shall provide a source of supply from which the county boards of elections may purchase the quantity of pollbooks needed for the execution of its responsibilities. In the preparation of ballots, pollbooks, abstract and return forms, and all other forms, the State Board of Elections may call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots and forms.

(k) Notwithstanding the provisions contained in Article 20 or Article 21 of Chapter 163 the State Board of Elections shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 60 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the general election. (1901, c. 89, ss. 7, 11; Rev., ss. 4302, 4305; 1913, c. 138; C.S., ss. 5923, 5926; 1921, c. 181, s. 1; 1923, c. 196; 1933, c. 165, ss. 1, 2; 1945, c. 982; 1953, c. 410, s. 2; 1967, c. 775, s. 1; 1973, c. 793, s. 2; 1975, c. 19, s. 65; 1977, c. 661, s. 6; 1979, c. 411, s. 1.)

Editor's Note. —

The 1977 amendment added subsection (k).

The 1979 amendment substituted "application forms required pursuant to G.S. 163-67" for "and pollbooks, cards, blank forms, instruction sheets, and forms necessary for the registration of voters and for holding primaries and elections in the counties" at the end of the second sentence of subsection (e), added the third and fourth sentences to subsection (e), deleted "and distribution" after "In the preparation" near the beginning of the fifth sentence of subsection (e), and substituted "may" for "shall" near the middle of that sentence.

As the rest of the section was not changed by the amendments only subsections (e) and (k) are set out.

§ 163-22.1. Power of State Board to order new elections.

Editor's Note. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

ARTICLE 4.

County Boards of Elections.

§ 163-31. Meetings of county boards of elections; quorum; minutes. — In each county of the State the members of the county board of elections shall meet at the courthouse or board office at noon on the Tuesday following the third Monday in June in the year of their appointment by the State Board of Elections and, after taking the oath of office provided in G.S. 163-30, they shall organize by electing one member chairman and another member secretary of the county board of elections. On the Tuesday following the first Monday in August of the year in which they are appointed the county board of elections shall meet and appoint precinct registrars and judges of elections. The board may hold other meetings at such times as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of board business. The chairman shall notify, or cause to be notified, all members regarding every meeting to be held by the board.

The county board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office and it shall be the responsibility of the secretary, elected by the board, to keep the required minute book current and accurate. The secretary of the board may designate the supervisor of elections to record and maintain the minutes under his supervision. (1901, c. 89, s. 11; Rev., ss. 4304, 4306; C.S., ss. 5925, 5927; 1921, c. 181, s. 2; 1923, c. 111, s. 1; 1927, c. 260, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1; c. 1191, s. 2; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1966, Ex. Sess., c. 5, s. 2; 1967, c. 775, s. 1; 1969, c. 208, s. 2; 1975, c. 159, s. 2; 1977, c. 626.)

Editor's Note. —
The 1977 amendment substituted "supervisor of elections" for "executive secretary" in the third sentence of the second paragraph.

§ 163-32. Compensation of members of county boards of elections. — In full compensation of their services, members of the county board of elections (including the chairman) shall be paid by the county twenty-five dollars ($25.00) per day for the time they are actually engaged in the discharge of their duties, together with reimbursement of expenditures necessary and incidental to the discharge of their duties. The per diem payment shall be prorated if a board member is not actually engaged in the discharge of his duties for a full day. For the purposes of this section, a full day consists of five hours. In its discretion, the board of county commissioners of any county may pay the chairman and members of the county board of elections compensation in addition to the per diem and expense allowance provided in this paragraph.

In all counties the board of elections shall pay its clerk, assistant clerks, and other employees such compensation as it shall fix within budget appropriations. Counties which adopt full-time and permanent registration shall have authority to pay supervisors of elections and special registration commissioners whatever compensation they may fix within budget appropriations. (1901, c. 89, s. 11; Rev., s. 4303; C.S., s. 5925; 1923, c. 111, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1; c. 843; c. 1191, s. 2; 1955, c. 800; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 1; 1973, c. 793, s. 8; c. 1344, s. 5; 1977, c. 626, s. 1.)

Editor's Note. — The 1977 amendment substituted "supervisors of elections" for "executive secretaries" in the second sentence of the second paragraph.

§ 163-35. Supervisor of elections to county board of elections; appointment; compensation; duties; dismissal. — (a) In the event a vacancy occurs in the office of county supervisor of elections in any of the county boards of elections in this State, the county board of election shall submit the name of the person they recommend to fill the vacancy to the Executive Secretary-Director of the State Board of Elections, and the procedure for employment thereafter shall be the same as the procedure hereinafter set out for termination of employment. Persons who shall not serve as a supervisor of elections include the following:

(1) Any person who holds any elective public office.
(2) Any person who is a candidate for any office in a primary or election.
(3) Any person who holds any office in a political party or committee thereof.
(4) Any person who is a campaign chairman or finance chairman for any candidate for public office, or who serves on any campaign committee for any candidate.
(5) Any person who has been convicted of a felony in any court unless such person's citizenship has been restored pursuant to the provisions of Chapter 13 of the General Statutes of North Carolina.
(6) Any person who has been removed by the State Board of Elections following a public hearing at any time.
(7) Any person who is a spouse, child, spouse of child, sister, or brother of any member of the county board of elections by whom such person would be employed or any person who is a member of said board.

(b) Termination of Employment. — The county board of elections may, by petition signed by a majority of the board, recommend to the Executive Secretary-Director of the State Board of Elections the termination of the employment of the county board's supervisor of elections. The petition shall clearly state the reasons for termination. Upon receipt of the petition, the Executive Secretary-Director shall forward a copy of same by certified mail, return receipt requested, to the county supervisor of elections involved. The county supervisor of elections may reply to said petition within 15 days of receipt thereof. Within 20 days of receipt of the county supervisor's of elections reply or the expiration of the time period allowed for the filing of said reply, the State Executive Secretary-Director shall render a decision as to the termination or retention of the county supervisor of elections. The decision of the Executive Secretary-Director of the State Board of Elections shall be final unless such decision shall, within 20 days from the official date on which it was made, be deferred by the State Board of Elections, in which event a public hearing shall be conducted by said State Board or any single member designated by the remaining four members, in the county seat of the county involved. Following the conduct of such public hearing and a decision by the State Board of Elections, the chairman of said Board shall notify the Executive Secretary-Director of the State Board of Elections, in writing, of the decision resulting from the public hearing. If the decision, rendered by the State Board of Elections, results in concurrence with the decision entered by the Executive Secretary-Director, the decision becomes final. If the decision rendered by the Board is contrary to that entered by the Executive Secretary-Director, then the Executive Secretary-Director shall, within 15 days from the written notification, enter an amended decision consistent with the results of the decision by the State Board of Elections. The employment of any supervisor of elections presently employed or hereafter employed shall not be terminated except in compliance with the procedures herein prescribed. For the purposes of this subsection the individual

designated by the remaining four members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23.

(c) Compensation. — The supervisor of elections shall be paid compensation as recommended by the county board of elections and approved by the respective boards of county commissioners. Beginning July 1, 1975, the board of county commissioners in every county shall compensate the supervisor of elections of the county board of elections with a minimum payment of twenty dollars ($20.00) per day for each day the supervisor of elections is in attendance to her prescribed duties. For the purposes of this section not less nor more than eight hours shall constitute one day. In addition to the minimum compensation required herein, the supervisor of elections of the county board of elections shall be granted the same vacation leave, sick leave and petty leave as granted to all other county employees in similar positions. It shall also be the responsibility of the board of county commissioners to appropriate sufficient funds to compensate a replacement for the supervisor of elections when authorized leave is taken.

(d) Duties. — The supervisor of elections may be empowered by the county board of elections to perform such administrative duties as might be assigned by the board and the chairman. In addition to any administrative duties the supervisor of elections shall be authorized to receive applications for registration and in pursuit of such authority shall be given the oath required of all registrars. In addition, the supervisor of elections may be authorized by the chairman to execute the responsibilities devolving upon the chairman provided such authorization by any chairman shall in no way transfer the responsibility for compliance with the law. The chairman shall remain liable for proper execution of all matters specifically assigned to him by law.

The county board of elections shall have authority, by resolution adopted by majority vote, to delegate to its supervisor of elections so much of the administrative detail of the election functions, duties, and work of the board, its officers and members, as is now, or may hereafter be vested in the board or its members as the county board of elections may see fit: Provided, that the board shall not delegate to a supervisor of elections any of its quasi-judicial or policy-making duties and authority. Within the limitations imposed upon him by the resolution of the county board of elections the acts of a properly appointed supervisors of elections shall be deemed to be the acts of the county board of elections, its officers and members. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 2; 1973, c. 859, s. 1; 1975, c. 211, ss. 1, 2; c. 713; 1977, c. 265, s. 21; c. 626, s. 1; c. 1129, s. 1.)

Editor's Note. —

The first 1977 amendment substituted "G.S. 163-23" for "G.S. 163-22 (c)" at the end of subsection (b).

The second 1977 amendment substituted "supervisor of elections" for "executive secretary" and "supervisor's of elections" for "executive secretary's" throughout the section.

The third 1977 amendment deleted "than four hours" preceding "nor more than eight hours" in the third sentence of subsection (c).

The authority to determine the level of compensation above the statutory minimum is in the board of county commissioners, not the board of elections which had only the power to recommend. Goodman v. Wilkes County Bd. of Comm'rs, 37 N.C. App. 226, 245 S.E.2d 590 (1978) (decided prior to 1977 amendments).

This section does not specifically provide for compensation for overtime work. By its scheme, however, the legislative intent of subsection (c) of this section, once the minimum payment of $20.00 per day is attained, requires that additional compensation or employment benefits, if any, be determined by the respective boards of county commissioners. Goodman v. Wilkes County Bd. of Comm'rs, 37 N.C. App. 226, 245 S.E.2d 590 (1978) (decided prior to 1977 amendments).

ARTICLE 5.

Precinct Election Officials.

§ 163-41. Precinct registrars and judges of election; special registration commissioners; appointment; terms of office; qualifications; vacancies; oaths of office.

(b) Appointment of Special Registration Commissioners. — The county board of elections may, in its discretion, in addition to registrars, select persons of good repute to act as special registration commissioners. Persons appointed as special registration commissioners shall be appointed no later than 60 days following the date on which registrars are appointed pursuant to G.S. 163-41 and shall serve for two years, but the county board of elections may terminate their authority at any time without cause.

In counties authorized to appoint special registration commissioners the chairman of each political party shall have the right to recommend registered voters who are residents of the county for appointment as special registration commissioners. If such recommendations are received by the county board of elections at least five days prior to the date on which such appointments must be made the county board should make appointments from the names thus recommended, although it shall not be required to do so.

Before entering upon his duties each special registration commissioner shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; that I will administer the duties of my office as special registration commissioner for . . . . . County without fear or favor, to the best of my knowledge and ability, according to law; so help me, God."

(1979, c. 766, s. 1; c. 782.)

Editor's Note. —

The first 1979 amendment substituted "The county board of elections may" for "In counties which adopt full-time and permanent registration the county board of elections may" at the beginning of the first sentence of subsection (b).

The second 1979 amendment substituted "no later than 60 days following the date on which registrars are appointed pursuant to G.S. 163-41" for "at the same time as required by G.S. 163-41 for the appointment of registrars" near the middle of the second sentence of the first paragraph.

As only subsection (b) was changed by the amendments, subsections (a) and (c) are not set out.

§ 163-41.1. Certain relatives prohibited from serving together.

(b) No precinct official who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as precinct official during any primary or election in which such candidate participates. The county board of elections shall temporarily disqualify any such official for the specific primary or election involved and shall have authority to appoint a substitute official, from the same political party, to serve only during the primary or election at which such conflict exists. (1975, c. 745; 1979, c. 411, s. 2.)

Editor's Note. — The 1979 amendment deleted the catchline of subsection (b) which read "Temporary Prohibition," and inserted "mother, father" and "brother or sister" near the beginning of the first sentence of subsection (b).

As only subsection (b) was changed by the amendment, subsection (a) is not set out.

§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office. — Each county and municipal board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the registrar and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the precinct for which appointed. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within a precinct.

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it before the seventh Saturday before the primary is to be held, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended.

No person who is a candidate for nomination or election shall be eligible to serve as an assistant.

Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the registrar of the precinct for which the assistant is appointed. (1929, c. 164, s. 35; 1933, c. 165, s. 24; 1953, c. 1191, s. 3; 1967, c. 775, s. 1; 1973, c. 793, s. 95; c. 1359, ss. 1-3; 1975, c. 19, s. 67; 1977, c. 95, ss. 1, 2.)

Editor's Note. —

The 1977 amendment rewrote the first paragraph and deleted the fourth paragraph, which read "In all precincts, whether using voting machines or paper ballots, the county board of elections may appoint one precinct assistant for each 300 voters registered in that precinct in addition to the two required precinct assistants."

§ 163-45. Observers; appointment. — The chairman of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chairman, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chairman contains the names of all persons authorized to represent such chairman's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the chairman of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, he or his campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the precinct for which appointed and must have good moral character. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the registrar of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the chairman of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer

is appointed. Before the opening of the voting place on the day of a primary or general election, the chairman shall deliver one copy of the list to the registrar for each affected precinct. He shall retain the other copy. The chairman, or the registrar and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the registrar of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chairman of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and he shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting his ballot, but, subject to these restrictions, the registrar and judges of elections shall permit him to make such observation and take such notes as he may desire. (1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 14, 94; 1977, c. 453.)

Editor's Note. — The 1977 amendment, in the first paragraph, divided the former first sentence into the present first and third sentences by deleting "Provided, that in a primary" and inserting the present second sentence, substituted "designate" for "appoint" in the present first sentence, added the language beginning "and such observers may" to the end of the present first sentence, inserted "during a primary" in the present third sentence, substituted "unaffiliated candidate" for "independent candidate" in the present fourth sentence, added "consistent with the provisions specified herein" to the end of the present fourth sentence, and deleted the former third sentence, which read "Observers serve also as challengers."

§ 163-46. Compensation of precinct officials and assistants. — The precinct registrar shall be paid the sum of thirty-five dollars ($35.00) per day for his services on the day of a primary, special or general election. Judges of election shall each be paid the sum of thirty dollars ($30.00) per day for their services on the day of a primary, special or general election. Assistants, appointed pursuant to G.S. 163-42, shall each be paid the sum of twenty-five dollars ($25.00) per day for their services on the day of a primary, special or general election. Ballot counters appointed pursuant to G.S. 163-43 shall be paid a minimum of five dollars ($5.00) for their services on the day of a primary, general or special election.

Registrars shall be paid the sum of twenty dollars ($20.00) per day and judges shall be paid the sum of fifteen [dollars] ($15.00) per day for attendance at the county canvass, pursuant to G.S. 163-173; or for attending the polling place for the purpose of registering voters upon instruction from the chairman of the county board of elections.

The chairman of the county board of elections, along with the supervisor of elections, shall conduct an instructional meeting prior to each primary and general election which shall be attended by each registrar and judge of election, unless excused by the chairman, and such precinct election officials shall be paid the sum of fifteen dollars ($15.00) for attending the instructional meetings required by this section.

In its discretion, the board of county commissioners of any county may provide funds with which the county board of elections may pay registrars, judges, assistants, and ballot counters in addition to the amounts specified in this section. Observers shall be paid no compensation for their services.

A person appointed to serve as registrar or judge of election when a previously appointed registrar or judge fails to appear at the voting place or leaves his post on the day of an election or primary, shall be paid the same compensation as the registrar or judge appointed prior to that date. (1901, c. 89, s. 42; Rev., s. 4311; C.S., s. 5932; 1927, c. 260, s. 2; 1931, c. 254, s. 16; 1933, c. 165, s. 3; 1935, c. 421,

s. 1; 1939, c. 264, s. 1; 1941, c. 304, s. 1; 1945, c. 758, s. 3; 1947, c. 505, s. 11; 1951, c. 1009, s. 1; 1953, c. 843; 1955, c. 800; 1957, c. 182, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1969, c. 24; 1971, c. 604; 1973, c. 793, ss. 15, 16, 94; 1977, c. 626, s. 1; 1979, c. 403.)

Editor's Note. — The 1977 amendment substituted "supervisor of elections" for "executive secretary" in the third paragraph.

The 1979 amendment increased the pay of precinct registrars from $25.00 to $35.00 per day, of election judges from $20.00 to $30.00 per day, and of election assistants from $15.00 to $25.00 per day, for all elections conducted after July 1, 1979.

SUBCHAPTER III. QUALIFYING TO VOTE.

ARTICLE 6.

Qualifications of Voters.

§ 163-55. Qualifications to vote; exclusion from electoral franchise.

Editor's Note. — For comment entitled, "State Durational Residence Requirements as a Violation of the Equal Protection Clause," see 3 N.C. Cent. L.J. 233 (1972).

For a note on the constitutionality of denying voting rights to convicted criminals, see 50 N.C.L. Rev. 903 (1972).

For survey of 1972 case law on student suffrage, see 51 N.C.L. Rev. 1060 (1973).

University Student, Etc. —

A student who intends to remain in his college community only until graduation should not for that reason alone be denied the right to vote in that community. Insofar as Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972) may be interpreted to the contrary, it is modified accordingly. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-57. Residence defined for registration and voting.

Editor's Note. — For survey of 1972 case law on student suffrage, see 51 N.C.L. Rev. 1060 (1973).

Test of Domicile. — A person has domicile for voting purposes at a place if he (1) has abandoned his prior home, (2) has a present intention to make that place his home, and (3) has no intention presently to leave that place. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

As Applied to Students. — A student is entitled to register to vote at the place where he is attending school if he can show by his declarations and by objective facts that he (1) has abandoned his prior home, (2) has a present intention of making the place where he is attending school his home, and (3) intends to remain in the college town at least as long as he is a student there and until he acquires a new domicile. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

A registrar is not bound by a student's mere statements as to his intent, no more than he is bound by the statements of anyone seeking to register to vote. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Evidence of Domicile. —

Domicile can be proved by various kinds of direct and circumstantial evidence. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Rebuttable Presumption of Student's Domicile. —

There is a rebuttable presumption that a student who leaves his parents' home to go to college is not a resident for voting purposes of the place where the college is located. The effect of this presumption is to place the burden of going forward with some proof of residence on a student seeking to register to vote. As with other persons the student has the burden of persuasion on the issue. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

The rebuttable presumption does not treat students differently from the rest of the population. It is merely a specialized statement of the general rule that the burden of proof is on one alleging a change in domicile. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

There is no denial of equal protection in the use of the rebuttable presumption that a student who leaves his parents' home to go to college is not domiciled in the place where the college is located. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

He need not also intend to stay in the college community beyond graduation in order to establish his domicile there. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

An adult student may acquire a domicile, etc. —

A student who intends to remain in this college community only until graduation should not for that reason alone be denied the right to vote in that community. Insofar as Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972) may be interpreted to the contrary, it is modified accordingly. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

It is reasonable for election officials to inquire of students seeking to register more thoroughly than of other persons. This additional screening procedure is not an impermissible attempt to "fence out" a segment of the community because of the way they may vote. It is instead a permissible attempt to determine who are members of the relevant community. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

In order to determine whether in fact a student has abandoned his prior home and presently intends to make the college town his home and intends to remain in the college town at least as long as he is a student there, a registrar should make inquiry of students more searching and extensive than may generally be necessary with respect to other residents. The kinds of questions that should be asked are generally set out in Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972). A registrar is not limited to these questions. One that should be asked of all persons seeking to register is "Are you now registered to vote, and, if so, where?" Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Constitutionality of Inquiry. — The use of direct and circumstantial evidence, including the results of inquiries into a student's ownership of property, vacation plans, etc., to determine the domicile of the student is not an unjustifiable intrusion into the private affairs of students attempting to register to vote, and is not an attempt to make unconstitutional classifications on the basis of wealth, travel, and property ownership. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

And Courts May Order That Such Inquiries Follow a Set Questionnaire. — If necessary to ensure that registrars comply with the law and make the necessary inquiries as to residence a court may order that these inquiries be in the form of a questionnaire to be devised by the court or by the county board of elections under the court's supervision. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Constitutionality of Use of Questionnaire. — The use of a questionnaire and the application of a presumption of nonresidency in order to place the burden of producing some evidence of residency upon the student seeking to register is constitutionally permissible where the practices and the guidelines under which they are carried out are not devices to keep students who are legal residents from voting, but rather are designed to help registrars obtain the necessary facts to determine whether a student is entitled to vote in a particular locality. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Student's Residence Is a Question of Fact. —

A student's residence for voting purposes is a question of fact dependent upon the circumstances of each individual's case. There is no permissible manner for making group determinations of residence. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-59. Right to participate or vote in party primary.

Cited in Hooks v. Eure, 423 F. Supp. 55 (W.D.N.C. 1976).

ARTICLE 7.

Registration of Voters.

§ 163-67. Full-time registration; application to register. — (a) The county boards of elections shall establish, prior to January 1, 1971, a full-time system of registration, as prescribed by the State Board of Elections, under which the registration books, process, and records shall be open continuously for the acceptance of registration applications and for the registration of voters at all reasonable hours and time consistent with the daily function of all other county offices. In such counties no registration shall entitle a registrant to vote in any

primary, general or special election unless the registrant shall have made application not less than 21 days, excluding Saturdays and Sundays, immediately preceding such primary, general or special election, provided that nothing shall prohibit registrants from registering to vote in future elections during such period.

When full-time registration has been established in a county, the official record of registration shall be made and kept in the form of an application to register which, as prescribed by the State Board of Elections, shall contain all information necessary to show the applicant's qualifications to register. In such a county, no person shall be registered to vote without first making a written, sworn, and signed application to register upon the form prescribed by the State Board of Elections. If the applicant cannot write because of physical disability, his name shall be written on the application for him by the election official to whom he makes application, but the specific reason for the applicant's failure to sign shall be clearly stated upon the face of the application.

Registrars and special registration commissioners appointed under the provisions of G.S. 163-41 may take registration applications from and administer registration oaths to qualified applicants without regard to the precinct residence of the registrar, special registration commissioner, or applicant: Provided, however, the county board of elections shall have power to limit the areas in which registrars and special registration commissioners may exercise the authority conferred in this paragraph.

Applications to register which have been completed by persons who have taken the required oath shall be forwarded promptly to the county board of elections. An application to register shall constitute a valid registration unless the county board of elections shall notify the applicant of its rejection within 30 days after its completion; provided that where the application is completed during the last 51 days prior to the election but at least 21 days, excluding Saturdays and Sundays, prior to the election, the notification of rejection shall be made no less than 14 days prior to the election or the application shall constitute a valid registration. If the application is rejected after the close of the registration books as provided in G.S. 163-67(a), the board shall notify the applicant at least 14 days before the election that it has rejected his application. The applicant may appear before the board and, if he establishes his qualifications to register prior to the election, he shall be permitted to vote. The loose-leaf binders containing the precinct records and the duplicate registration record, required by G.S. 163-65(a), shall be kept at all times in a safe place.

For the purpose of receiving registration applications, registrars shall attend the voting places in their precincts only on such days and at such hours as may be fixed by the county board of elections: Provided, the county board of elections shall not require registrars to be present at the voting places for this purpose on any day less than 21 days, excluding Saturdays and Sundays, prior to a primary or election. In its discretion, the county board of elections may require no attendance by registrars at the voting places for the purpose of receiving registration applications.

The county board of elections is authorized to make reasonable rules and regulations, not inconsistent with law and State Board regulations, to insure full-time registration as provided in this section.

(b) In counties which have less than 14,001 registered voters the State Board of Elections shall prescribe reasonable regulations permitting such counties to operate a modified full-time office to the extent that the operation of such full-time office will not necessarily be required to be open such as is required in counties with total registered voters in excess of 14,000; provided, that nothing herein shall preclude such counties from maintaining office hours for registration consistent with the hours observed by all other offices within said county.

(d) The cost of maintaining the registration and election processes required by this section and G.S. 163-67.1 shall be allocated by the respective boards of county commissioners upon approval of budget requirements submitted by the respective county board of elections. The respective boards of county commissioners shall appropriate reasonable and adequate funds necessary for the legal functions of the county boards of elections, including reasonable and just compensation of the supervisor of elections. (1901, c. 89, ss. 18, 21; Rev., ss. 4322, 4323; C.S., ss. 5946, 5947; 1923, c. 111, s. 3; 1933, c. 165, s. 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, ss. 3, 4; 1961, c. 382; 1963, c. 303, ss. 1, 2; 1967, c. 761, s. 3; c. 775, s. 1; 1969, c. 750, ss. 1, 2; 1977, c. 626, s. 1; 1979, c. 539, s. 5; c. 766, s. 2.)

Editor's Note. —

The 1977 amendment substituted "supervisor of elections" for "executive secretary" at the end of subsection (d).

The first 1979 amendment, effective Sept. 1, 1979, inserted "excluding Saturdays and Sundays" near the middle of the second sentence of the fourth paragraph of subsection (a), substituted "14" for "21" near the end of that sentence, and substituted the present third and fourth sentences of that paragraph for the previous third sentence which read: "The loose-leaf binders containing the precinct records and the duplicate registration record, required by G.S. 163-65(a), shall be kept at all times in a safe place."

The second 1979 amendment deleted the former last sentence in subsection (b), which read: "In counties which operate under a modified, full-time system as authorized by this section, registration commissioners shall not be allowed."

As the rest of the section was not changed by the amendments, only subsections (a), (b) and (d) are set out.

§ 163-69.1. Change of voter's name. — (a) If the name of a voter is changed in accordance with G.S. 48-36, 50-12, or Chapter 101 of the General Statutes, or if a married voter assumes the last name of her spouse, the voter shall not be required to re-register, but shall report the change of name in accordance with subsection (b) of this section before voting.

(b) A voter whose name has been changed shall report such change of name to an official authorized to register voters under G.S. 163-80 no later than 21 days (excluding Saturdays and Sundays) prior to an election, primary, or special election in order to vote in said election if the name change occurred on or before that date. Alternatively, the voter may report such change to the registrar at the polls, and, if otherwise eligible, may vote.

Any report made under this section shall be made under oath, and on a form prescribed by the county board of elections. (1979, c. 480.)

§ 163-72. Registration procedure; oath. — (a) Before questioning any applicant for registration as to his qualifications, the registrar shall present to the applicant a certification which shall be read by or to the applicant on his request and then signed by the applicant: "I hereby certify that the information I shall give with respect to my qualifications and identity is true and correct to the best of my knowledge.

. . . . . .

(Signature of applicant)"

After being sworn, the applicant shall state as accurately as possible his name, age, place of birth, place of residence, political party affiliation, if any, under the provisions of G.S. 163-74, the name of any municipalities in which he resides, and any other information which may be material to a determination of his identity and qualification to be admitted to registration. The applicant shall also present to the registrar written or documentary evidence that he is the person he represents himself to be. The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to the applicant's qualifications.

(b) If the registrar finds the applicant duly qualified and entitled to be registered, he shall administer the following registration oath to him, omitting the words in parentheses if the applicant does not claim residence in any municipality:

I, ..., do solemnly swear (or affirm) that I will support the Constitutions of the United States and the State of North Carolina; that I will have been a resident of this State and this precinct for 30 days by the date of the next election; that I have not registered, nor will I vote in any other county or State, so help me, God.

If the registrar finds the applicant qualified and entitled to be registered, and if the applicant has taken the oath prescribed in the preceding paragraph, the registrar shall register him by recording his name, age, race, residence, place of birth, municipality in which entitled to vote, and the precinct, municipality, county, or state from which he has removed in the event of a removal, in the appropriate columns of the registration book or other registration record.

The registration book or other record containing the information required by the preceding paragraph shall be evidence against the applicant in any court of law in a proceeding for false or fraudulent registration.

(c) Repealed by Session Laws 1979, c. 135, s. 1, effective March 12, 1979.

(d) Officers authorized by G.S. 163-80(a) to register voters shall personally examine the applicant and administer the oaths prescribed in G.S. 163-72(a) and (b) to each individual applying to register, and the officer shall sign the individual's application in the presence of the applicant at the time he takes the application.

(e) Any individual not authorized by G.S. 163-80 to register voters shall complete the registration application on behalf of any applicant only in the physical presence of an authorized registration officer, who shall in such case examine the applicant and administer the oaths required in G.S. 163-72(a) and (b). The registration officer shall sign the application in the presence of the applicant at the time he takes the application.

(f) The application of any individual who is registered by a procedure other than as set out in this section shall be void. (1901, c. 89, s. 12; Rev., s. 4319; C. S., s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 6; 1973, c. 793, s. 27; c. 1223, s. 3; 1975, c. 234, s. 2; 1979, c. 135, s. 1; c. 539, ss. 1-3; c. 797, ss. 1, 2.)

Editor's Note. —

The first 1979 amendment, effective Sept. 1, 1979, repealed subsection (c), which provided that no registered voter should be required to reregister upon moving from one precinct to another in the same county and outlined the procedure for transfer of registration in such an event.

The second 1979 amendment, effective Sept. 1, 1979, added subsections (d), (e), and (f).

The third 1979 amendment, effective Sept. 1, 1979, rewrote the first paragraph of subsection (a), substituting a written certification for an oral oath; and rewrote the registration oath contained in the first paragraph of subsection (b). The amendatory act purported to amend "G.S. 163-72(a) . . . by rewriting as follows," and set out only the first paragraph of the subsection as rewritten. However, it appears that there was no intention of eliminating the second paragraph of subsection (a), and that paragraph has been retained in the section as set out above.

Quoted in Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Cited in Hooks v. Eure, 423 F. Supp. 55 (W.D.N.C. 1976).

§ 163-72.1. Cancellation of prior registration. — (a) After having accepted the application for registration, and after advising the applicant that he is still bound by the oath first administered pursuant to G.S. 163-72, the registrar shall ask the applicant whether he is, at that time, also registered to vote in any other county, municipality or state. If the applicant answers in the affirmative, the

registrar shall obtain from him a signed authorization (in duplicate) to cancel all prior registrations. The authorization shall set forth the name under which the person previously was registered, his prior address (including state, county, street address, and precinct, if known), and the name under which he is applying to register. It shall be addressed to the appropriate election officials in the other county, municipality or state and shall request them to cancel his voting registration in that county or state. It also shall direct the county board of elections to which he is currently applying for registration to transmit a signed copy of the authorization to the appropriate election officials in the other county, municipality or state.

(1977, c. 265, s. 3.)

Editor's Note. — The 1977 amendment substituted "(in duplicate)" for "(in triplicate)" in the second sentence of subsection (a). As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 163-72.2. Change of address within a county. — (a) No registered voter shall be required to reregister upon moving from one precinct to another in the same county.

(b) In lieu thereof, the voter may in person, or by returnable first class mail, file a written report with the county board of elections, signed in his own hand, setting forth:

(1) His full name,

(2) His former residence address,

(3) His new residence address, and

(4) The date he moved to the new address.

The voter shall sign his name himself and shall not cause or allow his signature to be signed by any other person unless he is unable to sign his name himself.

(c) If the request is in proper form, and the board is satisfied as to the facts asserted and the signature, it shall immediately transfer the voter's registration to his new precinct, and notify the voter in person or by returnable mail of his new voting place and precinct. The board shall also correct his registration for municipal elections, if necessary.

(d) If a written report is submitted but does not contain sufficient information, the board shall request further information before acting.

(e) No report filed under this section shall be effective for a primary or election unless received by the board of elections on or before the twenty-first day (excluding Saturdays and Sundays) before the primary or election, except that if the report is submitted before the deadline but more information is requested, such report shall be effective for the primary or election if sufficient information is received more than 14 days before the primary or election.

(f) For the purpose of this section, a report in person shall be considered filed with the county board of elections if filed with any election official of that county authorized to register voters under G.S. 163-80.

(g) A county board of elections may make available printed forms containing spaces for the information required by this section. (1979, c. 135, s. 2.)

Editor's Note. — Session Laws 1979, c. 135, s. 4, makes this section effective Sept. 1, 1979.

§ 163-74. Record of political party affiliation or unaffiliated status; changing recorded affiliation; correcting erroneous record. — (a) Every person who registers to vote shall, at the time application is made, (i) state his desired political party affiliation or (ii) state that he wishes to be recorded as an "unaffiliated" voter. The person before whom the voter is registering shall

record the affiliation requested by the voter. Such recorded party affiliation, or unaffiliated designation, shall thereafter be permanent unless, or until, the registrant changes it under the provisions of subsection (b) of this section.

If the applicant (registrant) refuses to declare his party affiliation upon request, or if the applicant refuses further to state that he desires to be recorded as unaffiliated, then the registrar or other officer shall inform the applicant that although he may register, his record shall be designated "unaffiliated" and he shall not be eligible to vote in any political party primary but may vote in any general election.

(b) Change of Party Affiliation or Unaffiliated Status.—No registered elector shall be permitted to change the record of his party affiliation or unaffiliated status for a primary, second primary or special or general election after the close of the registration books immediately prior to any such election. Any registrant who desires to have the record of his party affiliation or unaffiliated status changed on the registration book shall, not less than 21 days (not including Saturdays and Sundays) before the election go to the chairman or the supervisor of elections of the county board of elections or to other registration officials specified in G.S. 163-80 and request that the change be made. Before being permitted to have the change made, the chairman, supervisor of elections or other registration official shall require the registrant to take the following oath, and it shall be the duty of the elections officer to administer it:

(1) If the voter desires to change from one political party to another, or from unaffiliated to a political party:

I, ..., do solemnly swear (or affirm) that I desire in good faith to change my party affiliation from the . . . . . Party (or from unaffiliated status) to the . . . . . Party, and that such change of affiliation be made on the registration records in the manner provided by law, so help me, God.

(2) If the voter desires to change his affiliation with any political party to unaffiliated status:

I, ..., do solemnly swear (or affirm) that I desire in good faith to change my party affiliation with the . . . . . Party to unaffiliated and that such change of affiliation be made on the registration records in the manner provided by law, so help me, God.

Upon receipt of the required oath, the county board of elections shall immediately change the record of the registrant's party affiliation, or unaffiliated status, to conform to that stated in the oath. Thereafter the voter shall be considered registered and qualified to vote in accordance with the effected change.

(c) Correction of Erroneous Record of Party Affiliation.— If at any time the chairman or supervisor of elections of the county board of elections shall be satisfied that an error has been made in designating the party affiliation of any voter on the registration records, then the chairman or supervisor of elections of the county board of elections shall make the necessary correction after first administering to the voter the following oath:

I, ..., do solemnly swear (or affirm) that I desire in good faith to have the erroneous entry of my affiliation with the . . . . . Party, or my unaffiliated status on the registration records corrected in the manner provided by law to show that I affiliate with the . . . . . Party (or that I elect to be recorded as an unaffiliated voter), so help me, God. (1939, c. 263, s. 6; 1949, c. 916, ss. 4, 8; 1953, c. 843; 1955, c. 800; c. 871, s. 3; 1957, c. 784, s. 5; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 30, 31; c. 1223, s. 5; 1975, c. 234, s. 2; 1977, c. 130, s. 1; c. 626, s. 1.)

Editor's Note. — The first 1977 amendment rewrote this section. The second 1977 amendment substituted "supervisor of elections" for "executive secretary" in the second and third sentences of

subsection (b) and in two places in the introductory paragraph of subsection (c).

Session Laws 1977, c. 130, s. 2, provides: "All persons who are recorded on the registration books as "Independent" or "No Party" designees, as of the date of ratification of this act, shall be presumed to be recorded as "unaffiliated" unless and until such persons request, in the manner provided by law, that their registration record be changed. The State Board of Elections shall issue appropriate directives to each county board of elections to effect compliance with this section."

Cited in Hooks v. Eure, 423 F. Supp. 55 (W.D.N.C. 1976).

§ 163-77. Appeal from county board of elections to superior court.

Editor's Note. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

§ 163-80. Officers authorized to register voters. — (a) Only the following election officials shall be authorized to register voters:

(1) Any member of a county board of elections who has been duly appointed pursuant to G.S. 163-22(c) and properly installed as required by G.S. 163-30 and 163-31.

(2) The supervisor of elections of a county board of elections appointed pursuant to the provisions of G.S. 163-35.

(3) Precinct registrars and judges of election appointed pursuant to the provisions of G.S. 163-41.

(4) Special registration commissioners appointed pursuant to the authority and limitation contained in G.S. 163-41(b).

(5) Full-time and salaried deputy supervisors of elections employed by the county board of elections and who work under the direct supervision of the board's supervisor of elections appointed pursuant to the provisions contained in G.S. 163-35.

(6) Local public library employees designated by the governing board of such public library to be appointed by the county board of elections as special library registration deputies. Persons appointed under this subsection shall be given the oath contained in G.S. 163-41(b), and shall be authorized to accept applications to register on those days and during those hours said special deputies are on duty with their respective libraries.

(1977, c. 626, s. 1.)

Editor's Note. — The 1977 amendment, in subsection (a), substituted "supervisor of elections" for "executive secretary" in subdivisions (2) and (5) and "deputy supervisors of elections" for "deputy executive secretaries" in subdivision (5).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Article 8.

Challenges.

§ 163-85. Challenge procedure other than on day of primary or election. — (a) Any registered voter of the county may challenge the right of any person to register, remain registered or vote in such county. No such challenge may be made after the close of the registration books, pursuant to G.S. 163-67, before each primary, general, or special election.

(b) Challenges Shall Be Made to the County Board of Elections. — Each challenge shall be made separately, in writing, under oath and on forms prescribed by the State Board of Elections, and shall specify the reasons why

the challenged voter is not entitled to register, remain registered, or vote. When a challenge is made, the board of elections shall cause the word "challenged" to be written in pencil on the registration records of the voter challenged. The challenge shall be signed by the challenger and shall set forth the challenger's address.

(c) Such challenge may be made only for one or more of the following reasons:

(1) That a person is not a resident of the State of North Carolina, or

(2) That a person is not a resident of the county in which the person is registered, or

(3) That a person is not a resident of the precinct in which the person is registered, or

(4) That a person is not 18 years of age, or if the challenge is made within 60 days before a primary, that the person will not be 18 years of age by the next general election, or

(5) That a person has been adjudged guilty of a felony and is ineligible to vote under G.S. 163-55(2), or

(6) That a person is disqualified from voting under G.S. 122-55.2(c) because such person has been adjudicated incompetent under the provisions of Chapter 35 of the General Statutes and has not been restored to legal capacity, or

(7) That a person has been disqualified from voting under G.S. 163-276 and the period of disqualification has not expired, or

(8) That a person is not a citizen of the United States, or

(9) With respect to municipal registration only, that a person is not a resident of the municipality in which the person is registered.

(d) When a challenge is made, the county board of election shall schedule a preliminary hearing on the challenge, and shall take such testimony under oath and receive such other evidence proffered by the challenger as may be offered. The burden of proof shall be on the challenger, and if no testimony is presented, the board shall dismiss the challenge. If the challenger presents evidence and if the board finds that probable cause exists that the person challenged is not qualified to vote, then the board shall schedule a hearing on the challenge.

(e) The presentation of a letter mailed by returnable first-class mail to the voter at the address listed on the voter registration card and returned because the person does not live at the address shall constitute prima facie evidence that the person no longer resides in the precinct. (1901, c. 89, s. 19; Rev., s. 4339; C.S., s. 5972; 1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 34; 1979, c. 357, s. 1.)

Editor's Note. — The 1979 amendment rewrote this section.

Session Laws 1979, c. 357, s. 6, provides: "In the case of any challenge pending on the date of ratification of this act [April 13, 1979], the board of elections shall notify the challenger of the pendency of the challenge. Unless the challenger resubmits the challenge under this act within 60 days of notification, the board of elections shall dismiss the challenge."

Stated in Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-86. Hearing on challenge. — (a) A challenge made under G.S. 163-85 shall be heard and decided before the date of the next primary or election, except that if the board finds that because of the number of challenges, it cannot hold all hearings before the date of the election, it may order the challenges to be heard and decided at the next time the challenged person appears and seeks to vote, as if the challenge had been filed under G.S. 163-87. Unless the hearing is ordered held under G.S. 163-87, it shall be heard and decided by the board of elections.

(b) At least 10 days prior to the hearing scheduled under G.S. 163-86(c), the board of elections shall mail by first-class mail, a written notice of the challenge

to the challenged voter, to the address of the voter listed in the registration records of the county. The notice shall state succinctly the grounds asserted, and shall state the time and place of the hearing. If the hearing is to be held at the polls, the notice shall state that fact and shall list the date of the next scheduled election, the location of the voter's polling place, and the time the polls will be open. A copy of the notice shall be sent to the person making the challenge and to the chairman of each political party in the county.

(c) At the time and place set for the hearing on a challenge entered prior to the date of a primary or election, the county board of elections shall explain to the challenged registrant the qualifications for registration and voting in this State. The board chairman, or in his absence the board secretary, shall then administer the following oath to the challenged registrant:

"You swear (or affirm) that the statements and information you shall give in this hearing with respect to your identity and qualifications to be registered and to vote shall be the truth, the whole truth, and nothing but the truth, so help you, God."

After swearing the challenged registrant, the board shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, the board shall tender to him the following oath or affirmation:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age or will become 18 by the date of the next general election; that you have or will have resided in this State and in the precinct for which registered for 30 days by the date of the next general election; that you are not disqualified from voting by the Constitution or the laws of this State; that your name is . . . . . ., and that in such name you were duly registered as a voter of . . . . . precinct; and that you are the person you represent yourself to be, so help you, God."

If the challenged registrant refuses to take the tendered oath, or submit to the board the affidavit required by subsection (d), below, the challenge shall be sustained. If the challenged registrant takes the tendered oath, the board may, nevertheless, sustain the challenge if it finds the challenged registrant is not a legal voter.

The board, in conducting hearings on challenges, shall have authority to subpoena any witnesses it may deem appropriate, and administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the persons challenged.

(d) Appearance by Challenged Registrant. — The challenged registrant shall appear in person at the challenge hearing. If he is unable to appear in person, he may be represented by another person and must tender to the county board of elections an affidavit that he is a citizen of the United States, is at least 18 years of age or will become 18 by the date of the next general election, has or will have resided in this State and in the precinct for which registered for 30 days by the date of the next general election, is not disqualified from voting by the Constitution or laws of this State, is named . . . . . and was duly registered as a voter of . . . . . precinct in such name, and is the person represented to be by the affidavit. (1901, c. 89, s. 22; Rev., s. 4340; C. S., s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 35; 1979, c. 357, s. 2.)

Cross Reference. — As to challenges pending on the effective date of the 1979 amendment, see the Editor's Note to § 163-85.

Editor's Note. — The 1979 amendment rewrote this section.

Stated in Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-87. Challenges allowed on day of primary or election.

Editor's Note. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

Cited in Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-88. Hearing on challenge made on day of primary or election.

Editor's Note. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

§ 163-88.1. Request for challenged ballot. — (a) If the decision of the registrar and judges pursuant to G.S. 163-88 is to sustain the challenge, the challenged voter may request a challenged ballot by submitting an application to the registrar, such application shall include as part thereof an affidavit that such person possesses all the qualifications for voting and is entitled to vote at the election. The form of such affidavit shall be prescribed by the State Board of Elections and shall be available at the polls.

(b) Any person requesting a challenged ballot shall have the letter "C" entered at the appropriate place on the voter's permanent registration record. The voter's name shall be entered on a separate page in the pollbook entitled "Challenged Ballot," and serially numbered. The challenged ballot shall be the same type of ballot used for absentee voters, and the registrar shall write across the top of the ballot "Challenged Ballot # . . . . .," and shall insert the same serial number as entered in the pollbook. The registrar shall deliver to such voter a challenged ballot together with an envelope marked "Challenged Ballot" and serially numbered. The challenged voter shall forthwith mark the ballot in the presence of the registrar in such manner that the registrar shall not know how the ballot is marked. He shall then fold the ballot in the presence of the registrar so as to conceal the markings and deposit and seal it in the serially numbered envelope. He shall then deliver such envelope to the registrar. The registrar shall retain all such envelopes in an envelope provided by the county board of elections, which he shall seal immediately after the polls close, and deliver to the board chairman at the canvass.

(c) The chairman of the county board of elections shall preserve such ballots in the sealed envelopes for a period of six months after the election. However, in the case of a contested election, either party to such action may request the court to order that the sealed envelopes containing challenged ballots be delivered to the board of elections by the chairman. If so ordered, the board of elections shall then convene and consider each challenged ballot and rule as to which ballots shall be counted. In such consideration, the board may take such further evidence as it deems necessary, and shall have the power of subpoena. If any ballots are ordered to be counted, they shall be added to the vote totals. (1979, c. 357, s. 3.)

Cross Reference. — As to challenges pending on the effective date of this section, see the Editor's Note to § 163-85.

§ 163-89. Procedures for challenging absentee ballots.

Editor's Note. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

§ 163-90.1. Burden of proof. — (a) Challenges shall not be made indiscriminately and may only be made if the challenger knows, suspects or reasonably believes such a person not to be qualified and entitled to vote.

(b) No challenge shall be sustained unless the challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter is properly registered or affiliated. (1979, c. 357, s. 4.)

Cross Reference. — As to challenges pending on the effective date of this section, see the Editor's Note to § 163-85.

§ 163-90.2. Action when challenge sustained, overruled, or dismissed. — (a) When any challenge is sustained for any cause listed under G.S. 163-85(c), the board shall cancel the voter registration of the voter and shall remove his card from the book, but shall maintain such record for at least six months and during the pendency of any appeal.

(b) When any challenge heard under G.S. 163-88 or 163-89 is sustained on the ground that the voter is not affiliated with the political party shown on his registration record, the board shall change the voter's party affiliation to "unaffiliated."

(c) When any challenge made under G.S. 163-85 is overruled or dismissed, the board shall erase the word "challenged" which appears on the person's registration records. (1979, c. 357, s. 4.)

Cross Reference. — As to challenges pending on the effective date of this section, see the Editor's Note to § 163-85.

§ 163-90.3. Making false affidavit perjury. — Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this Article to be sworn or affirmed shall be guilty of perjury. (1979, c. 357, s. 4.)

Cross Reference. — As to challenges pending on the effective date of this section, see the Editor's Note to § 163-85.

SUBCHAPTER IV. POLITICAL PARTIES.

ARTICLE 9.

Political Party Definition.

§ 163-96. "Political party" defined; creation of new party. — (a) Definition. — A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by 10,000 persons who, at the time they sign, are registered and qualified voters in this State, and which comply with the conditions

prescribed in subsection (b) of this section. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(1979, c. 411, s. 3.)

Editor's Note. — The 1979 amendment substituted "June" for "July" near the middle of the second sentence of subdivision (2) of subsection (a). As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 163-97.1. Voters affiliated with expired political party. — The State Board of Elections shall be authorized to promulgate appropriate procedures to order the county boards of elections to change the registration affiliation of all voters who are recorded on the voter registration books as being affiliated with a political party which has lost its legal status as provided in G.S. 163-97. The State Board of Elections shall not implement the authority contained in this section earlier than 90 days following the certification of the election in which the political party failed to continue its legal status as provided in G.S. 163-97. All voters affiliated with such expired political party shall be changed to "unaffiliated" designation by the State Board's order and all such registrants shall be entitled to declare a political party affiliation as provided in G.S. 163-74(b). (1975, c. 789; 1977, c. 408, s. 1.)

Editor's Note. — The 1977 amendment substituted "'unaffiliated'" for "'no party'" and "as provided in G.S. 163-74(b)" for "on primary election day, consistent with the provisions contained in G.S. 163-74(a)" in the third sentence.

§ 163-98. General election participation by new political party. — In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for State, congressional, and national offices printed on the official ballots, but it shall not be entitled to have the names of candidates for other offices printed on State, district, or county ballots at that election.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates for State, congressional, and national offices in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. (1901, c. 89, s. 85; Rev., s. 4292; C. S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1; 1967, c. 775, s. 1; 1979, c. 411, s. 4.)

Editor's Note. — The 1979 amendment substituted "July" for "August" near the beginning of the second sentence of the second paragraph.

SUBCHAPTER V. NOMINATION OF CANDIDATES.

ARTICLE 10.

Primary Elections.

§ 163-104. Primaries governed by general election laws; authority of State Board of Elections to modify time schedule.

Local Modification to Former §§ 163-117 to 163-147. — Session Laws 1945, c. 894, relating to Mitchell County, was repealed by Session Laws 1979, c. 210, which provides that this Article is applicable in Mitchell County.

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal. — (a) Notice and Pledge. — No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date .....

I hereby file notice as a candidate for nomination as ..... in the ..... party primary election to be held on ....., 19..... I affiliate with the ..... party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the ..... party.)

I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election.

Signed .....

Name of candidate

Witness:

.....

.....

(Title of witness)"

Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File. — No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has

changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-74(b), shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least three months prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election.

(c) Time for Filing Notice of Candidacy. — Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court, Judges of the Court of Appeals
Judges of the superior courts
Judges of the district courts
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices.

(1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5.)

Editor's Note. —

The first 1977 amendment deleted the former fourth paragraph of subsection (b), which related to the eligibility of unregistered persons to file as candidates in a party primary, and deleted "All township offices" from the end of subsection (c).

The second 1977 amendment, in the second paragraph of subsection (b), substituted "'unaffiliated'" for "an independent" and inserted "party" preceding "primary election," and deleted the former third paragraph, which read "A person registered with no record of party affiliation shall be ineligible to file as a candidate in a primary election."

The third 1977 amendment, in subsection (c), substituted "January" for "April," "first Monday in February" for "last Friday in May" and "party primary nomination" for "party primary nominations" in the introductory language of both paragraphs.

The first 1979 amendment, effective Sept. 1, 1979, inserted "or who has changed from unaffiliated status to party affiliation" near the beginning of the second sentence of the first paragraph of subsection (b).

The second 1979 amendment substituted "date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense" for "seventh Saturday before the primary, at State expense, the State Board of Elections shall print and furnish" near the beginning of the fourth paragraph of subsection (a).

As subsections (d) and (e) were not changed by the amendments, they are not set out.

For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

§ 163-107. Filing fees required of candidates in primary; refunds.

(b) Refund of Fees. — If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section, withdraws his notice of candidacy within the period prescribed in G.S. 163-106(e), he shall be entitled to have the fee he paid refunded. If the fee was paid to the State Board

of Elections, the chairman of that Board shall certify to the Auditor that the refund should be made, and the Auditor shall give his warrant upon the Treasurer of the State who shall make the refund payment. If the fee was paid to a county board of elections, the chairman of the Board shall certify to the county accountant that the refund should be made, and the county accountant shall make the refund in accordance with the provisions of the County Fiscal Control Act.

If any person files a notice of candidacy and pays a filing fee to a board of elections other than that with which he is required to file under the provisions of G.S. 163-106(e), he shall be entitled to have the fee refunded in the manner prescribed in this subsection if he requests the refund before the date on which the right to file for that office expires under the provisions of G.S. 163-106(e). (1915, c. 101, s. 4; 1917, c. 218; 1919, cc. 50, 139; C.S., ss. 6023, 6024; 1927, c. 260, s. 20; 1933, c. 165, s. 12; 1939, c. 264, s. 2; 1959, c. 1203, s. 5; 1967, c. 775, s. 1; 1969, c. 44, s. 84; 1973, c. 793, s. 37; 1977, c. 265, s. 6.)

Editor's Note. —

The 1977 amendment, in the second paragraph of subsection (b), substituted "file under the provisons of G.S. 163-106(e)" for "file under the provisions of G.S. 163-106(c)" and "the date on which the right to file for that office expires under the provisions of G.S. 163-106(e)" for "12:00 noon, on Friday preceding the sixth Saturday before the primary" and deleted "for refund upon withdrawal of candidacy" following "prescribed in this subsection."

As subsection (a) was not changed by the amendment, only subsection (b) is set out.

§ 163-107.1. Petition in lieu of payment of filing fee.

(c) County, Municipal and District Primaries. — If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, judge of the District Court and judge of the Superior Court, or members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

(1977, c. 386.)

Editor's Note. — The 1977 amendment added, at the end of the second sentence of subsection (c), the language beginning "or in the alternative."

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 163-108. Certification of notices of candidacy.

(b) No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-106(c) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the following offices who have filed the required notice and pledge and paid the required filing fee to the State Board of Elections, so that their names may be printed on the official county ballots: Superior court judge, district court judge, and solicitor.

(1979, c. 797, s. 5.)

Editor's Note. — The 1979 amendment, effective Sept. 1, 1979, substituted "No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-106(c) has expired" for "Prior to the fourth Saturday before the primary election" at the beginning of subsection (b).

As only subsection (b) was changed by the amendment, the rest of the section is not set out.

§ 163-109. Primary ballots; printing and distribution.

(b) Ballots to Be Furnished by State Board of Elections. — It shall be the duty of the State Board of Elections to print official ballots for each political party having candidates for the following offices to be voted for in the primary:

United States Senator,

Member of the House of Representatives of the United States Congress,

Governor, and

All other State offices, except superior court judge, district court judge, and district attorney.

In its discretion, the State Board of Elections may print separate primary ballots for each of these offices, or it may combine some or all of them on a single ballot.

At least 60 days before the date of the primary, the State Board of Elections shall deliver a sufficient number of these ballots to each county board of elections. The chairman of the county board of elections shall furnish the chairman of the State Board of Elections with a written receipt for the ballots delivered to him within two days after their receipt.

(c) Ballots to Be Furnished by County Board of Elections. — It shall be the duty of the county board of elections to print official ballots for each political party having candidates for the following offices to be voted for in the primary:

Superior court judge,

District court judge,

District attorney,

State Senator,

Member of the House of Representatives of the General Assembly, and

All county offices.

In printing primary ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

In its discretion, the county board of elections may print separate primary ballots for the district and county offices listed in this subsection, or it may combine some or all of them on a single ballot. In a primary election, if there shall be 10 or more candidates for nomination to any one office, the county board of elections in its discretion may prepare a separate ballot for said office.

Three days before the primary election, the chairman of the county board of elections shall distribute official State, district, and county ballots to the registrar of each precinct in his county, and the registrar shall give him a receipt for the ballots received. On the day of the primary it shall be the registrar's duty to have all the ballots delivered to him available for use at the precinct voting place.

(d) Repealed by Session Laws 1977, c. 265, s. 8. (1915, c. 101, ss. 8, 17: 1917, c. 218; C.S., ss. 6028, 6037; 1927, c. 260, s. 22; 1933, c. 165, s. 16; 1966, Ex. Sess., c. 5, ss. 8, 10; 1967, c. 775, s. 1; c. 1063, s. 3; 1973, c. 793, ss. 39-41; 1977, c. 265, ss. 7, 8; 1979, c. 411, s. 6.)

Editor's Note. — The 1977 amendment substituted "district attorney" for "solicitor" in the fourth subparagraph of the first paragraph of subsection (b), substituted "District attorney" for "Solicitor" in the third subparagraph of the first paragraph of subsection (c), and repealed subsection (d), which related to district solicitors' ballots.

The 1979 amendment substituted "60 days" for "30 days" near the beginning of the first sentence of the last paragraph of subsection (b).

As subsection (a) was not changed by the amendments, it is not set out.

§ 163-111. Determination of primary results; second primaries.

(e) Date of Second Primary; Procedures. — If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held four weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely affidavit of transfer of precinct, under the provisions of G.S. 163-72(c), before the first primary may vote in the second primary without having to refile the affidavit of transfer if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary.

(1977, c. 265, s. 9.)

Editor's Note. —

The 1977 amendment added the present third sentence of the second paragraph of subsection (e).

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

ARTICLE 11.

Nomination by Petition.

§ 163-122. Unaffiliated candidates nominated by petition. — Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) On or before 12:00 noon on the last Friday in April preceding the general election, file with the appropriate board of elections, State or county, written petitions requesting him to be a candidate for a specified office, signed by qualified voters of the political division in which the office will be voted for equal in number to ten percent (10%) of those who, in the last gubernatorial election in the same political division, voted for Governor.

(2) At the time of filing the petitions referred to in subdivision (1) of this section, file with the chairman or secretary of the appropriate board of elections his affidavit that he seeks to become an unaffiliated candidate for the office specified and that he does not affiliate with any political party.

(3) The board of elections shall examine and verify the signatures on the petition and shall certify only the names of signers who are found to be qualified registered voters in the county.

When the provisions of this section have been complied with, the board of elections with which the petitions and affidavit have been filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with the provisions of G.S. 163-140.

A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year. (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236; 1967, c. 775, s. 1; 1973, c. 793, s. 50; 1977, c. 408, s. 3; 1979, c. 23, ss. 1, 3; c. 534, s. 2.)

Editor's Note. — The 1977 amendment substituted "unaffiliated" for "independent or nonpartisan" in the introductory language and in subdivision (2) of the first paragraph, and substituted "unaffiliated" for "independent" in the second paragraph.

The first 1979 amendment substituted "12:00 noon on the last Friday in April" for "the last Saturday in May" near the beginning of subdivision (1), and added the last paragraph of the section.

The second 1979 amendment added subdivision (3).

Session Laws 1979, c. 534, s. 5, provides: "This act is effective with respect to elections held on or after July 1, 1979."

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

ARTICLE 12.

Precincts and Voting Places.

§ 163-128. Election precincts and voting places established or altered. — (a) Each county shall be divided into a convenient number of precincts for the purpose of voting, and there shall be at least one precinct encompassed within the territory of each township; provided, however, that upon a resolution adopted by the county board of elections and approved by the Secretary-Director of the State Board of Elections voters from a given precinct within a township may be temporarily transferred, for the purpose of voting, to a precinct in an adjacent township. Any such transfers shall be for the period of time equal only to the term of office of the county board of elections making such transfer. When such a resolution has been adopted by the county board of elections to assign voters from more than one township to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the township in which such voters reside. There shall be at least one voting place in each precinct.

The county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts or voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, discontinuing, or creating a precinct or voting place, the board shall give 20 days' notice thereof prior to the date on which the registration books or records next close pursuant to G.S. 163-67. Notice shall be given by advertisement in a newspaper having general circulation in the county, by posting a copy of the resolution at the courthouse door, and by mailing a copy of the resolution to the chairman of every political party in the county.

(b) Each county board of elections shall prepare a map of the county on which the precinct boundaries are drawn or described, shall revise the map when boundaries are changed, and shall keep a copy of the current map on file and

posted for public inspection at the office of the Board of Elections. (Rev., s. 4313; 1913, c. 53; C. S., s. 5934; 1921, c. 180; 1933, c. 165, s. 3; 1967, c. 775, s. 1; 1969, c. 570; 1973, c. 793, ss. 51-53; 1975, c. 798, s. 2; 1979, c. 785.)

Editor's Note. —
The 1979 amendment, effective July 1, 1979, designated the former section as subsection (a), and added subsection (b).

ARTICLE 13.

General Instructions.

§ 163-137. General, special and primary election ballots; names and questions to be printed thereon; distribution. — (a) The ballots printed for use in general and special elections under the provisions of this Article shall contain:

(1) The names of all candidates who have been put in nomination in accordance with the provisions of this Chapter by any political party recognized in this State.

(2) The names of all persons who have qualified as unaffiliated candidates under the provisions of G.S. 163-122.

(3) All questions, issues, and propositions to be voted on by the people.

(b) The ballots prepared for use in general and special elections under the provisions of this Article by the State Board of Elections shall be printed and delivered to the county boards of elections at least 60 days prior to the date of any election in which absentee voting is permitted and at least 60 days prior to the date of any election in which absentee voting is not permitted.

(1977, c. 408, s. 4; 1979, c. 797, s. 6.)

Editor's Note. —
The 1977 amendment substituted "unaffiliated" for "independent" in subdivision (2) of subsection (a).

The 1979 amendment, effective Sept. 1, 1979, substituted "60 days" for "30 days," in two places, near the middle and near the end of subsection (b).

As the rest of the section was not changed by the amendment, only subsections (a) and (b) are set out.

§ 163-140. Kinds of ballots; what they shall contain; arrangement.

(b) General Election Ballots. —

(1) Ballot for Presidential Electors: On the ballot for presidential electors there shall be printed, under the titles of the offices, the names of the candidates for President and Vice-President of the United States nominated by each political party qualified under the provisions of G.S. 163-96. A separate column shall be assigned to each political party with candidates on the ballot, and the party columns shall be separated by distinct black lines. At the head of each column the party name shall be printed in large type and below it a circle, one-half inch in diameter, and below the circle the names of the party's candidates for President and Vice-President in that order. On the face of the ballot, above the party column division, the following instructions shall be printed in heavy black type:

"a. To vote this ballot, make a cross (X) mark in the circle below the name of the political party for whose candidates you wish to vote.

b. A vote for the names of a political party's candidates for President and Vice-President is a vote for the electors of that party, the names of whom are on file with the Secretary of State.

c. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

The official ballot for presidential electors shall not be combined with any other official ballots.

(2) Ballot for United States Senator: Beneath the title and general instructions set out in this subsection, the ballot for United States Senator shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates." The name of each political party's candidate for United States Senator shall be printed in the appropriate party column, and the names of unaffiliated candidates for the office shall be printed in the column headed "Unaffiliated Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

"a. Vote for only one candidate.

b. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

When the ballot for United States Senator is combined with a ballot for another office, below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot to the top above the party and unaffiliated column division:

"a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. If you tear or deface or wrongly mark this ballot, return it and get another."

(3) Ballot for Member of the United States House of Representatives: Beneath the title and general instructions set out in this subsection, the congressional district ballot for member of the United States House of Representatives shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates." The name of each political party's candidate for member of the United States House of Representatives from the congressional district shall be printed in the appropriate party column, and the names of unaffiliated candidates for the office shall be printed in the column headed "Unaffiliated Candidates." At the left of

each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

"a. Vote for only one candidate.

b. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

When the ballot for member of the United States House of Representatives is combined with a ballot for another office, below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot at the top above the party and unaffiliated column division:

"a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. If you tear or deface or wrongly mark this ballot, return it and get another."

(4) State Ballot: Beneath the title and general instructions set out in this subsection, the ballot for State officers (including judges of the superior court) shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having candidates for State offices and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates." Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." With distinct black lines, the State Board of Elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed "Unaffiliated Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

"a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
c. If you should insert a cross (X) mark in one of the party circles at the top of the ballot and also mark in the voting square opposite the name of any candidate of any party, your ballot will be counted as a straight ticket vote for all of the candidates of the party whose circle you marked.
d. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

(5) County Ballot: Beneath the title and general instructions set out in this subsection, the ballot for county officers (including solicitor for the solicitorial district in which the county is situated, district judge for the district court district in which the county is situated, and members of the General Assembly in the senatorial and representative districts in which the county is situated) shall be divided into parallel columns separated by distinct black lines. The county board of elections shall assign a separate column to each political party having candidates for the offices on the ballot and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type and and at the head of the column for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates." Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." With distinct black lines, the county board of elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed "Unaffiliated Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

"a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
c. If you should insert a cross (X) mark in one of the party circles at the top of the ballot and also mark in the voting square opposite the name of any candidate of any party, your ballot will be counted as a straight ticket vote for all of the candidates of the party whose circle you marked.
d. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the county board of elections.

(6) Repealed by Session Laws 1973, c. 793, s. 56.

(7) Ballot for Constitutional Amendments and Other Propositions Submitted to the People: The form of ballot used in submitting a constitutional amendment or other proposition or issue to the voters of the entire State shall be prepared by the State Board of Elections and approved by the Attorney General. The form of ballot used in submitting propositions and issues to the voters of a single county or subdivision shall be prepared by the county board of elections. In a referendum the issue presented to the voters with respect to each constitutional amendment, question, or proposition, shall be printed in the form laid down by the General Assembly or other body submitting it. If more than one amendment, question, or proposition is submitted on a single ballot, each shall be printed in a separate section, and the sections shall be numbered consecutively. On the face of the ballot, above the issue or issues being submitted, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible board of elections, State or county.

(e) Repealed by Session Laws 1977, c. 265, s. 10. (1929, c. 164, s. 9; 1931, c. 254, ss. 2-10; 1933, c. 165, ss. 20, 21; 1939, c. 116, s. 1; 1947, c. 505, s. 9; 1949, c. 672, s. 2; 1955, c. 812, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 56, 57; 1977, c. 265, s. 10; c. 408, s. 5.)

Editor's Note. — The first 1977 amendment repealed subsection (e), which related to district solicitors' ballots.

The second 1977 amendment, in subsection (b), substituted "unaffiliated" for "independent" throughout subdivisions (2), (3), (4) and (5).

As the rest of the section was not changed by the amendments, only subsections (b) and (e) are set out.

§ 163-150. Voting procedures.

(f) Maintenance of Pollbook or Other Record of Voting. — At each primary, general or special election, the precinct registrar shall appoint two precinct assistants (one from each political party as recommended by the county chairman thereof), one to be assigned to keep the pollbook or other voting record used in the county as approved by the State Board of Elections, and the other to keep the registration books under the supervision of the precinct officials. The names of all persons voting shall be checked on the registration records and entered on the pollbook or other voting record. In an election where observers may be appointed under G.S. 163-45 each voter's party affiliation shall be entered in the proper column of the book or other approved record opposite his name. The precinct assistant shall make each entry at the time the ballots are handed to the voter. As soon as the polls are closed, the registrar and judges of election shall sign the pollbook or other approved record immediately beneath the last voter's name entered therein. The registrar or the judge appointed to attend the county canvass shall deliver the pollbook or other approved record to the chairman of the county board of elections at the time of the county canvass, and the chairman shall remain responsible for its safekeeping.

(1979, c. 60, s. 1.)

Editor's Note. — The 1979 amendment substituted "In an election where observers may be appointed under G.S. 163-45" for "In a primary election" at the beginning of the third sentence of subsection (f).

Session Laws 1979, c. 60, s. 2, provides: "This act is effective with respect to all elections held on or after September 1, 1979."

As the rest of the section was not changed by the amendment, only subsection (f) is set out.

§ 163-151. Marking ballots in primary and election. — The voter shall adhere to the following rules and those instructions printed on the ballot in marking his ballots:

(1) In both primaries and elections, a voter may designate his choice of candidates by making a cross mark (X), a check mark, or some other clear indicative mark in the appropriate voting square or circle.

(2) In both primaries and elections, a voter should not mark more names for any office than there are positions to be filled by election.

(3) A voter should not affix a sticker to a ballot, mark a ballot with a rubber stamp, attach anything to a ballot, wrap or fold anything in a ballot or do anything to a ballot except to mark it properly with a pencil or pen.

(4) Straight Ticket. — In an election, but not a primary, if the voter desires to vote for all candidates of one political party (a straight ticket), he shall either:

a. Mark the party circle printed above the party column; or

b. Mark in the voting square at the left of the name of every candidate printed on the ballot in the party column for whom he desires to vote; or

c. Mark the party circle and also mark some or all names printed in that party column.

(5) Split Ticket. — In an election but not in a primary, if the voter desires to vote for candidates of more than one political party (a split ticket), he shall:

a. Omit marking in the party circle of any party and mark in the voting square opposite the name of each candidate of any party printed on the ballot for whom the voter wishes to vote.

b. If the voter should mark the party circle of one party, and also mark the voting square opposite the name of candidates of any other party, the ballot shall be counted as a straight ticket for all candidates of the party whose circle was marked and the individually marked candidates of any other party shall not be counted.

(6) Write-In Votes. —

a. In an election but not in a primary, if a voter desires to vote for a person whose name is not printed on the ballot, he shall write in the name of the person in the space immediately beneath the name of a candidate, if any, printed on the ballot for that particular office. The voter shall write the name himself unless he is entitled to assistance under G.S. 163-152, in which case the person giving assistance may write in the name at the request of the voter.

b. The voter should not write in a name of a person whose name appears as a candidate of a political party. If the voter writes in the name of a candidate printed on the ballot of any party, the write-in shall not be counted.

c. If the voter has marked the party circle of one political party, he may also write in the name of a person for whom he wishes to vote beneath the name of a candidate printed in the same column whose party circle he has marked.

d. If the voter has marked the party circle of one party, he should not write in the name of a person under the name of a candidate in any other party. In such case, the write-in shall not be counted, but the ballot shall be counted for all candidates of the party whose circle was marked.

e. No voter shall write the name of any person on a primary ballot. (1915, c. 101, s. 11; 1917, c. 218; C. S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14; 1929, c. 164, ss. 20, 22, 23, 25; 1931, c. 254, ss. 13, 14; 1939, c. 263, s. 312; 1953, c. 1040; 1955, c. 767; 1959, c. 1203, s. 7; 1967, c. 775, s. 1; 1973, c. 793, ss. 60, 61; c. 1223, s. 7; c. 1344, ss. 2, 3; 1979, c. 802, s. 1.)

Editor's Note. — The 1979 amendment rewrote this section.

§ 163-152. Assistance to voters in primaries and general elections. — (a) In Primaries or General Election. —

(1) Who Is Entitled to Assistance: In a primary or general election, a registered voter qualified to vote in the primary or general election shall be entitled to assistance in getting to and from the voting booth and in preparing his ballots in accordance with the following rules:

a. Any voter shall be entitled to assistance from a near relative of his choice.

b. If no near relative of the voter's choice is present at the voting place, a voter in any of the following three categories shall be entitled to assistance from any voter of the precinct who has not given aid to another voter at the same primary or general election; or, if no such person be present at the voting place, from the registrar or one of the judges of election, or one of the assistants appointed pursuant to G.S. 163-42:

1. One who, on account of physical disability, is unable to enter the voting booth without assistance;
2. One who, on account of physical disability, is unable to mark his ballots without assistance;
3. One who, on account of illiteracy, is unable to mark his ballots without assistance.

(2) Procedure for Obtaining Assistance: A person seeking assistance in a primary or general election shall, upon arriving at the voting place, first request the registrar to permit him to have assistance, stating his reasons. If the registrar determines that the voter is entitled to assistance, he shall ask the voter to point out and identify the near relative or other voter of the precinct he desires to help him and to whose assistance he is entitled under this section. The registrar shall thereupon direct the near relative or other voter indicated to render the requested aid. If no near relative or other voter of the voter's choice is present, the voter entitled to assistance may request and obtain aid from the registrar, one of the judges or one of the assistants appointed pursuant to G.S. 163-42, at the voter's choice. Under no circumstances shall any precinct official be assigned to assist a voter who qualifies for assistance under this section, who was not specified by the voter.

(1977, c. 345, ss. 1, 2.)

Editor's Note. — The 1977 amendment, in subsection (a), added "or one of the assistants appointed pursuant to G.S. 163-42" to the end of the introductory language of subdivision (1)b, and in subdivision (2), substituted "registrar, one of the judges or one of the assistants appointed pursuant to G.S. 163-42, at the voter's choice" for "registrar or one of the judges" at the end of the fourth sentence, and added the fifth sentence.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 163-153. Access to voting enclosure. — In all counties, only the following persons shall be allowed within the voting enclosure while the polls are open to voting:

(6) Any voter of the precinct while entering and explaining a challenge, and any voter of the county who has challenged a voter in that precinct if the challenge is heard at the polls under G.S. 163-87 and 163-88, while entering and explaining a challenge.

(1979, c. 357, s. 5.)

Cross Reference. — As to challenges pending on the effective date of the 1979 amendment, see the Editor's Note to § 163-85.

Editor's Note. — The 1979 amendment inserted "and any voter of the county who has challenged a voter in that precinct if the challenge is heard at the polls under G.S. 163-87 and 163-88, while entering and explaining a challenge" at the end of subdivision (6).

As the rest of the section was not changed by the amendment, only subdivision (6) is set out.

§ 163-154. Posting lists of civilian and military absentee voters and new resident presidential election voters. — (a) In General Elections. — When delivered to the registrar at the voting place on the day of a general election as required by G.S. 163-233, G.S. 163-251, or G.S. 163-73, the registrar shall immediately post in a conspicuous location at the voting place:

(1) The list (and any supplemental lists) of absentee ballots to be voted in the precinct which have been received by the chairman of the county board of elections.

(2) The list (and any supplemental lists) entitled "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued" prepared in compliance with the provisions of G.S. 163-251.

(3) Repealed by Session Laws 1977, c. 265, s.11.

(1977, c. 265, s. 11.)

Editor's Note. —

The 1977 amendment repealed subdivision (3) of subsection (a), which read "The list of new resident voters of the precinct entitled to cast ballots for presidential electors but for no other offices prepared by the chairman of the county board of elections in compliance with the provisions of G.S. 163-73."

As subsection (b) was not changed by the amendment, it is not set out.

§ 163-155. Aged and disabled persons allowed to vote outside voting enclosure. — In any primary or election any qualified voter who is able to travel to the voting place, but because of age, or physical disability and physical barriers encountered at the voting place is unable to enter the voting place or enclosure to vote in person without physical assistance, shall be allowed to vote between the hours of 7:00 A.M. and 6:00 P.M. only either in the vehicle conveying such person to the voting place or in the immediate proximity of the voting place under the following restrictions:

(1) The county board of elections shall have printed and numbered a sufficient supply of affidavits to be distributed to each precinct registrar which shall be in the following form:

"Affidavit of person voting outside voting place or enclosure.

State of North Carolina

County of . . . . . .

I do solemnly swear (or affirm) that I am a registered voter in . . . . . precinct. That because of age or physical disability I am unable to enter the voting place to vote in person without physical assistance. That I desire to vote outside the voting place and enclosure.

I understand that a false statement as to my condition will subject me to a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six months, or both.

. . . .
Date Signature of Voter
. . . .
Address
. . . .
Signature of assistant who
administered oath."

(2) The registrar shall designate one of the assistants, appointed under G.S. 163-42 to attend the voter. Upon arrival outside the voting place, the voter shall execute the affidavit after being sworn by the assistant. The ballots shall then be delivered to the voter who shall mark the ballots and hand them to the assistant. The ballots shall then be delivered to one of the judges of elections who shall deposit the ballots in the proper boxes. The affidavit shall be delivered to the other judge of election.

(3) The voter shall be entitled to the same assistance in marking the ballots as is authorized by G.S. 163-152.

(4) The affidavit executed by the voter shall be retained by the county board of elections for a period of six months. In those precincts using voting machines, the county board of elections shall furnish paper ballots of each kind for use by persons authorized to vote outside the voting place by this section.

(5) If there is no assistant appointed under G.S. 163-42 to perform the duties required by this section, the precinct registrar or one of the precinct judges, to be designated by the voter, if he chooses, or, if he does not, by the precinct registrar, shall perform those duties.

A violation of this section shall be a misdemeanor and upon conviction punished by a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six months, or both, in the discretion of the court. (1971, c. 746, s. 1; 1973, c. 793, s. 65; 1979, c. 425, s. 1.)

Editor's Note. — The 1979 amendment substituted "7:00 A.M. and 6:00 P.M." for "9:00 A.M. and 5:00 P.M." near the end of the introductory paragraph.

Session Laws 1979, c. 425, s. 2, provides: "This act shall become effective with respect to elections held on or after September 1, 1979."

ARTICLE 15.

Counting Ballots, Canvassing Votes, and Certifying Results in Precinct and County.

§ 163-169. Counting ballots at precincts; unofficial report of precinct vote to county board of elections.

(b) General Rule. — Only official ballots shall be voted and counted. No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to determine the voter's choice under the rules for counting ballots. Such determination shall be made by the county board of elections if the registrar and judges are unable to determine the voter's choice, or whether a particular ballot should be counted.

(j) Repealed by Session Laws 1977, c. 265, s. 12. (1933, c. 165, s. 8; 1953, c. 843; 1955, cc. 800, 891; 1961, c. 487; 1963, c. 303, s. 1; 1965, c. 871; 1967, c. 775, s. 1; 1973, c. 793, s. 94; 1977, c. 265, s. 12; 1979, c. 802, s. 2.)

Editor's Note. —

The 1977 amendment repealed subsection (j), relating to presidential ballots of new resident voters.

The 1979 amendment inserted "voted and" near the end of the first sentence of subsection (b), inserted "official" near the beginning of the second sentence of subsection (b), deleted "counted which is marked contrary to law, but no ballot shall be" before "rejected" near the beginning of that sentence, added "under the rules for counting ballots" at the end of that sentence, and added the third sentence to subsection (b).

As the rest of the section was not changed by the amendments, only subsections (b) and (j) are set out.

§ 163-170. Rules for counting ballots. — Only official ballots shall be voted and counted. No official ballot shall be rejected because of technical errors in marking it unless it is impossible to determine the voter's choice. In applying the general rule, all election officials shall be governed by the following rules:

(1) If for any reason it is impossible to determine a voter's choice for an office, the ballot shall not be counted for that office but shall be counted for all other offices.

(2) If a ballot is marked for more names than there are positions to be filled, it shall not be counted for that office but shall be counted for all other offices.

(3) If a ballot has been defaced or torn by a voter so that it is impossible to determine the voter's choice for one or more offices, it shall not be counted for such offices but shall be counted for all offices for which the voter's choice can be determined.

(4) If a voter has properly marked the voting square with pen or pencil, and also has affixed a sticker to a ballot, or marked a ballot with a rubber stamp, attached anything to a ballot, wrapped or folded anything in a ballot, or done anything to a ballot other than mark it properly with pen or pencil, it shall be counted unless such action by the voter makes it impossible to determine the voter's choice.

(5) Write-In Votes. — If a name has been written in on an official general election ballot as provided in G.S. 163-151, it shall be counted in accordance with the following rules:

a. The name written in shall not be counted unless written in by the voter or a person authorized to assist the voter pursuant to G.S. 163-152.

b. The name shall be written in immediately below the name of a candidate for a particular office, if any, and shall be counted as a vote for the person whose name has been written in for that office. If the voter has made a mark to the left of the name written in, or checked in the party circle or the square beside the name of a candidate below whose name the write-in appears, or if the voter strikes out, marks through or crosses out the name printed above the write-in, such action by the voter shall not serve to invalidate the ballot or the vote for the person whose name was written in for that particular office.

c. If the person whose name was written in appears as a candidate of a political party for any office, the write-in shall be ignored and the ballot shall be counted as though no write-in appeared for such office.

d. Marking Party Circle and Write-Ins. —

1. If the voter marks the party circle above the column in which he has entered the write-in, his ballot shall be counted as a vote for the person whose name has been written in, and for all other candidates of the party in whose circle he has marked, except the candidate beneath whose printed name the write-in appears.

2. If the voter has marked the party circle at the top of the column of a political party, and has made a write-in under the name of a candidate printed in a column of a different political party, the write-in shall not be counted, and the ballot shall be counted as a vote for all candidates of the party in whose circle he has marked.

(6) Split Ticket. —

a. If the voter has marked the party circle of one party and also marked the voting square of individual candidates of another party, the ballot shall be counted as a straight ballot and counted as a vote for every candidate for the party whose circle has been marked.

b. If the voter votes a split ticket by omitting to mark the party circle and marks the voting square opposite the name of candidates for whom he desires to vote in different party columns, the ballot shall be counted as a vote for each candidate marked in a different party column.

(7) Voting a Straight Ticket. — If a voter desires to vote for all candidates of one political party, a straight ticket, he shall either:

a. Mark the party circle printed at the top of the party column; or

b. Mark the voting squares at the left of the name of every candidate of the same party printed on the ballot; or

c. Mark the party circle and also mark some or all names printed in that party column.

In either case, the ballot shall be counted as a straight ticket and counted as a vote for every candidate whose name is printed in the party column. (1929, c. 164, s. 28; 1931, c. 254, s. 15; 1933, c. 165, ss. 8, 23; 1939, c. 116, s. 2; 1947, c. 505, s. 10; 1955, c. 812, s. 2; c. 891; c. 1104, ss. 1-2½; 1957, cc. 344, 440, 589, 647, 737, 1383; 1959, cc. 105, 604, 610, 888; c. 1203, s. 9; 1961, cc. 451, 487; 1963, cc. 154, 167, 376, 389, 390, 567, 774; 1965, cc. 119, 154, 547, 727; c. 1117, s. 3; 1967, c. 775, s. 1; 1973, c. 793, s. 68; 1979, c. 802, s. 3.)

Editor's Note. — The 1979 amendment rewrote this section.

§ 163-175. County board of elections to canvass returns. — On the second day (Sunday excepted) next after every primary and election, the county board of elections shall meet at 11:00 A.M., at the county courthouse, for the purpose of canvassing the votes cast in the county and preparing the county abstracts. If the returns from any precinct have not been received by the county board by 12:00 noon, on that day, or if the returns of any precinct are incomplete or defective, the board shall have authority to dispatch a peace officer to the residences of the election officials of the delinquent precinct for the purpose of securing proper returns for that precinct.

In the presence of such persons as choose to attend, the members of the county board of elections shall open the precinct returns, canvass and judicially determine the results of the voting in the county, and prepare and sign duplicate abstracts showing:

(1) In a primary, the total number of votes cast in each precinct and in the county for each candidate of each political party for each office.

(2) In an election, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, the political party with which he is affiliated, and the total number of votes cast in the county for each person for each different office.

In complying with the provisions of this section, the county board of elections shall have power and authority to judicially pass upon all facts relative to the primary or election, to make or order such recounts as it deems necessary, and

to judicially determine the result of the primary or election. The board shall also have power to send for papers and persons and to examine them, and to pass upon the legality of any disputed ballots transmitted to it by any precinct election official.

When, on account of errors in tabulating returns and filling out abstracts, the result of a primary or election in any one or more precincts cannot be accurately known, the county board of elections shall be allowed access to the ballot boxes in such precincts to make or order a recount and to declare the result. (1915, c. 101, s. 27; 1917, c. 218; C.S., s. 6048; 1933, c. 165, s. 8; 1957, c. 1263; 1966, Ex. Sess., c. 5, s. 4; 1967, c. 775, s. 1; 1977, c. 265, s. 13.)

Editor's Note. — The 1977 amendment deleted the last paragraph, which read "When the county board of elections has judicially determined the result of the primary or election, the chairman of the board shall proclaim the result at the courthouse door, stating the number of votes cast in the county for each candidate for each office."

For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

§ 163-177. Disposition of duplicate abstracts. — Within six hours after the returns of a primary or election have been canvassed and the results judicially determined, the chairman of the county board of elections shall mail, or otherwise deliver, to the State Board of Elections the duplicate-original abstracts prepared in accordance with G.S. 163-176 for all offices and referenda for which the State Board of Elections is required to canvass the votes and declare the results including:

President and Vice-President of the United States
Governor, Lieutenant Governor, and all other State executive officers
United States Senators
Members of the House of Representatives of the United States Congress
Justices, Judges, and District Attorneys of the General Court of Justice
State Senators in multi-county senatorial districts
Members of the State House of Representatives in multi-county representative districts
Constitutional amendments and propositions submitted to the voters of the State.

One duplicate abstract prepared in accordance with G.S. 163-176 for all offices and referenda for which the county board of elections is required to canvass the votes and declare the results (and which are listed below) shall be retained by the county board, which shall forthwith publish and declare the results; the second duplicate abstract shall be mailed to the chairman of the State Board of Elections, to the end that there be one set of all primary and election returns available at the seat of government.

All county offices
State Senators in single-county senatorial districts
Members of the State House of Representatives in single-county representative districts
Propositions submitted to the voters of one county.

If the chairman of the county board of elections fails or neglects to transmit duplicate abstracts to the chairman of the State Board of Elections within the time prescribed in this section, he shall be guilty of a misdemeanor and subject to a fine of one thousand dollars ($1,000): Provided, that the penalty shall not apply if the chairman was prevented from performing the prescribed duty because of sickness or other unavoidable delay, but the burden of proof shall be on the chairman to show that his failure to perform was due to sickness or unavoidable delay. (1933, c. 165, s. 8; 1966, Ex. Sess., c. 5, s. 3; 1967, c. 775, s. 1; 1969, c. 44, s. 86; c. 971, s. 2; 1973, c. 47, s. 2; c. 793, s. 69; 1975, c. 844, s. 7; 1977, c. 265, s. 14.)

Editor's Note. —
The 1977 amendment in the first paragraph, deleted "All township offices" from the list of offices and referenda for which the county board of elections is required to canvass the votes and declare the results.

§ 163-180. Chairman of county board of elections to furnish certificate of election. — Not earlier than five days nor later than 10 days after the results of an election have been officially determined and published in accordance with G.S. 163-175 and G.S. 163-179, the chairman of the county board of elections shall furnish to each of the following persons appropriate certificates of election under his hand and seal: County officers and persons elected to membership in the General Assembly in representative and senatorial districts composed of only one county. He shall also immediately notify all persons elected to county offices to meet at the courthouse on the first Monday in the ensuing December to be qualified.

In issuing certificates of election under this section, the chairman of the county board of elections shall be restricted by the provisions of G.S. 163-181. (1933, c. 165, s. 8; 1947, c. 505, s. 4; 1955, c. 871, s. 5; 1959, c. 1203, s. 3; 1966, Ex. Sess., c. 5, s. 5; 1967, c. 775, s. 1; 1977, c. 265, s. 15.)

Editor's Note. — The 1977 amendment deleted "township officers" following "County officers" in the first sentence of the first paragraph.

§ 163-181. When election contest stays certification of election. — If an election contest is properly pending before a county or city board of elections or before the State Board of Elections on appeal or otherwise, after a primary or election, the chairman of the county or city board of elections shall not issue a certification of election or certify a nominee for the office in controversy until the contest has been finally decided by the appropriate board of elections or by the court in the event the decision of the State Board of Elections is on appeal. (1933, c. 165, s. 8; 1947, c. 505, s. 4; 1955, c. 871, s. 5; 1959, c. 1203, s. 3; 1966, Ex. Sess., c. 5, s. 5; 1967, c. 775, s. 1; 1975, c. 844, s. 9; 1977, c. 661, s. 4.)

Editor's Note. —
The 1977 amendment rewrote this section.

For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

ARTICLE 16.

Canvass of Returns for Higher Offices and Preparation of State Abstracts.

§ 163-188. Meeting of State Board of Elections to canvass returns of primary and election. — Following each primary and election held in this State under the provisions of this Chapter, the State Board of Elections shall meet in the Hall of the House of Representatives in the City of Raleigh to canvass the votes cast in all the counties of the State for all national, State, and district offices, to determine by the count who is nominated or elected to the respective offices, and to declare the results and prepare abstracts as required by G.S. 163-192. The time and date of the general election canvass shall be 11:00 A.M., on the Tuesday following the third Monday after the general election. The time and date of the primary canvass shall be fixed by the State Board of Elections.

At the meeting required by the preceding paragraph, if the abstracts of returns have not been received from all of the counties, the Board may adjourn for not more than 10 days for the purpose of securing the missing abstracts. In obtaining them, the Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the

expense of the counties. The State Board of Elections is authorized to enforce the penalties provided in G.S. 163-177 and 163-178 for failure of a county elections board chairman or clerk of superior court to comply with the provisions of this Chapter in making returns of a primary or election.

At the meeting required by the first paragraph of this section (or at any adjourned session thereof), the State Board of Elections shall examine the county abstracts when they have all been received and shall proceed with the canvass publicly. (1933, c. 165, s. 9; 1967, c. 775, s. 1; 1975, c. 844, s. 10; 1977, c. 661, s. 5.)

Editor's Note. —

The 1977 amendment substituted "State Board of Elections" for "State Board, but in no event shall the canvass be later than the eighth day after the primary election and the State Board shall accept and record the totals reflected on the abstracts received from the counties and it shall be the responsibility of each county to accurately record the correct totals for each office" at the end of the third sentence of the first paragraph.

ARTICLE 18.

Presidential Electors.

§ 163-211. Compensation of presidential electors. — Presidential electors shall be paid, for attending the meeting held in the City of Raleigh on the first Monday after the second Wednesday in December next after their election, the sum of forty-four dollars ($44.00) per day and traveling expenses at the rate of seventeen cents (17¢) per mile in going to and returning home from the required meeting. (1901, c. 89, s. 84; Rev., s. 2761; C. S., s. 3878; 1933, c. 5; 1967, c. 775, s. 1; 1979, c. 1008.)

Editor's Note. — The 1979 amendment increased the pay for presidential electors from $10.00 per day to $44.00 per day, and the traveling expense from 5¢ per mile to 17¢ per mile.

ARTICLE 18A.

Presidential Preference Primary Act.

§ 163-213.2. Primary to be held; date; qualifications and registration of voters. — Beginning with the Tuesday after the first Monday in May, 1980, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than 21 days prior to the said primary. (1971, c. 225; 1975, c. 744; c. 844, s. 18; 1977, c. 19; c. 661, s. 7.)

Editor's Note. —

The first 1977 amendment added the second paragraph.

The second 1977 amendment substituted "Tuesday after the first Monday in May, 1980" for "fourth Tuesday in March, 1976."

For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

§ 163-213.3. Conduct of election.

Seventeen Year Olds Whose 18th Birthdays Will Be Reached Prior to the Presidential General Election in November, 1976, May Vote in the N.C. Presidential Preference Primary Election. — See opinion of Attorney General to The Honorable Patricia S. Hunt, Member, House of Representatives, N.C. General Assembly, 45 N.C.A.G. 205 (1976).

§ 163-213.8. Political parties and delegates bound by results of primary on first ballot. — (a) Upon completion and certification of the primary results by the State Board of Elections, the Secretary of State shall certify the results to the State chairman of each political party.

Each political party and its delegates from North Carolina shall be bound on the first ballot at the national convention by the results of the primary. Each political party at the State level shall adopt rules for the allocation of delegate votes on the first ballot which reflect the actual division of votes in the results of the party primary as much as possible, consistent with the national party rules of that political party.

After the vote on the first ballot at a national convention, all responsibility imposed by this Article shall terminate and further balloting shall be consistent with the rules of the political party.

In the event of the death or the withdrawal of a candidate prior to the first ballot, any delegate votes which would otherwise be allocated to him, shall be considered uncommitted.

(b) In case of conflict between subsection (a) of this section and the national rules of a political party, the State executive committee of that party has the authority to resolve the conflict by adopting for that party the national rules, which shall then supercede any provision in subsection (a) of this section with which it conflicts, provided that the executive committee shall take only such action under this subsection necessary to resolve the conflict. (1971, c. 225; 1975, c. 744; 1979, c. 800.)

Editor's Note. —
The 1979 amendment designated the former section as subsection (a), and added subsection (b).

ARTICLE 19.

Petitions for Elections and Referenda.

§ 163-221. Persons may not sign name of another to petition. — (a) No person may sign the name of another person to:

(1) Any petition calling for an election or referendum;
(2) Any petition under G.S. 163-96 for the formulation of a new political party;
(3) Any petition under G.S. 163-107.1 requesting a person to be a candidate;
(4) Any petition under G.S. 163-122 to have the name of an unaffiliated candidate placed on the general election ballot, or under G.S. 163-296 to have the name of an unaffiliated or nonpartisan candidate placed on the regular municipal election ballot; or
(5) Any petition under G.S. 163-213.5 to place a name on the ballot under the Presidential Preference Primary Act.

(b) Any name signed on a petition, in violation of this section, shall be void.

(c) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than six months or fined

in an amount not to exceed five hundred dollars ($500.00), or both. (1977, c. 218, s. 1; 1979, c. 534, s. 1.)

Editor's Note. — The 1979 amendment rewrote this section. Prior to the 1979 amendment, this section forbade only the unauthorized signing of another's name to a petition calling for an election or referendum. The penalty remains the same.

Session Laws 1977, c. 218, s. 2, makes this section effective Oct. 1, 1977.

Session Laws 1979, c. 534, s. 5, provides: "This act is effective with respect to elections held on or after July 1, 1979."

§§ 163-222 to 163-225: Reserved for future codification purposes.

SUBCHAPTER VII. ABSENTEE VOTING.

ARTICLE 20.

Absentee Ballot.

§ 163-226. Who may vote an absentee ballot. — (a) Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election on constitutional amendments, referenda or bond proposals, and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections, in the manner provided in this Article if:

(1) He expects to be absent from the county in which he is registered during the entire period that the polls are open on the day of the specified election in which he desires to vote; or

(2) He is unable to be present at the voting place to vote in person on the day of the specified election in which he desires to vote because of his sickness or other physical disability; or

(3) He is incarcerated, whether in his county of residence or elsewhere, shall be entitled to vote by absentee ballot in the county of his residence in any election, specified herein, in which he otherwise would be entitled to vote. Absentee voting shall be in the same manner as provided in this Article. The chief custodian or superintendent of the institution or other place of confinement shall certify that the applicant is not a felon, and the certification shall be as prescribed by the State Board of Elections. The State Board of Elections is authorized to prescribe procedures to carry out the intent and purpose of this subsection;

(4) He is an employee of the county board of elections and his assigned duties on the day of the election will cause him to be unable to be present at the voting place to vote in person and provided such employee has his application witnessed by the chairman of the county board of elections.

(b) Absentee Ballots; Exceptions. — Notwithstanding the authority contained in G.S. 163-226(a), absentee ballots shall not be permitted in fire district elections. (1939, c. 159, s. 1; 1963, c. 457, s. 1; 1967, c. 775, s. 1; c. 952, s. 1; 1973, c. 536, s. 1; c. 1018; 1977, c. 469, s. 1; 1979, c. 140, s. 1.)

Cross Reference. — For present provisions covering the subject matter of former subsection (d) of this section as it existed prior to the 1977 amendment, see § 163-226.1.

Editor's Note. —

The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, rewrote this section.

The 1979 amendment deleted "ABC elections conducted under authority of G.S. 18A-51 or 18A-52 or in sanitary district elections or in" before "fire district elections" and "or soil and water conservation district elections" after "fire district elections" in subsection (b).

For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

§ 163-226.1. Absentee voting in primary. — A qualified voter may vote by absentee ballot in a statewide or countywide primary provided he is affiliated, at the time he makes application for absentee ballots, with the political party in whose primary he wishes to vote. The official registration records of the county in which the voter is registered shall be proof of whether he is affiliated with a political party and of the party, if any, with which he is affiliated. (1977, c. 469, s. 1.)

Editor's Note. — Session Laws 1977, c. 469, s. 2, makes this section effective with respect to elections held on or after Sept. 1, 1977.

§ 163-226.2. Absentee voting in municipal elections. — Absentee voting by qualified voters residing in a municipality shall be in accordance with the authorization specified in G.S. 163-302. (1977, c. 469, s. 1.)

Editor's Note. — Session Laws 1977, c. 469, s. 2, makes this section effective with respect to elections held on or after Sept. 1, 1977.

§ 163-226.3. Certain acts declared felonies. — (a) Any person who shall, in connection with absentee voting in any primary, general, municipal or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a felony and upon conviction shall be imprisoned for not less than six months or fined not less than one thousand dollars ($1,000), or both, in the discretion of the court. It shall be unlawful:

(1) For any person except the voter's near relative as defined in G.S. 163-227(c)(4) or the voter's legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163-227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance;

(2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163-227.2 except a member of the county board of elections, the supervisor of elections, an employee of the board authorized by the board, the voter's near relative as defined in G.S. 163-227(c)(4), or the voter's legal guardian;

(3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163-227.2 to vote his absentee ballot outside of the voting booth or private room provided to him for that purpose in the office of the county board of elections or to receive assistance in getting to and from the voting booth or private room and in preparing and marking his ballots from any person other than a member of the county board of elections, the supervisor of elections, an employee of the board of elections authorized by the board, a near relative of the voter as defined in G.S. 163-227(c)(4), or the voter's legal guardian;

(4) For any owner, manager, director, employee, or other person, other than the voter's near relative as defined in G.S. 163-227(c)(4) or legal guardian, to make application on behalf of a registered voter who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other

than the voter's near relative or legal guardian to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot;

(5) For any officer with a seal to take the acknowledgement on the container-return envelope of any absentee voter in any primary or election in which the officer is a candidate for nomination or election;

(6) For any person to take into his possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voter's near relative as defined in G.S. 163-227(c)(4) or the voter's legal guardian;

(7) Except as provided in subsections (1), (2), (3), and (4) of this section and G.S. 163-227.2(e), for any voter to permit another person to assist him in marking his absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark his absentee ballot.

(b) The State Board of Elections or a county board of elections, upon receipt of a sworn affidavit from any qualified voter of the State or the county, as the case may be, attesting to first-person knowledge of any violation of subsection (a) of this section, shall transmit such affidavit to the appropriate district attorney, who shall investigate and prosecute any person violating subsection (a). (1979, c. 799, s. 4.)

Editor's Note. — Session Laws 1979, c. 799, s. 6, makes this section effective Sept. 1, 1979.

§ 163-227. State Board to prescribe forms of applications for absentee ballots; county to secure. — (a) A voter falling in any one of the categories defined in G.S. 163-226, 163-226.1 or 163-226.2 may apply for absentee ballots not earlier than 60 days prior to the statewide, county or municipal election in which he seeks to vote and not later than 5:00 P.M. on the Wednesday before that election. Subject to all other provisions contained in this Article, a voter applying for an absentee ballot shall complete the appropriate application to be secured by the county board of elections, lettered A, B, C, or OS, as designed and prescribed by the State Board of Elections and specified below:

Application A shall be completed by a voter expecting to be absent from the county of his residence all day on the day of the specified election. (G.S. 163-226(1)(3)).

Application B shall be completed by a voter who is unable to be present at the voting place to vote in person on the day of the specified election because of his sickness or other physical disability occurring before 5:00 P.M. on the Wednesday prior to the date of the specified election. (G.S. 163-226(2)). Application B shall be printed on the reverse side of Application A.

Application C shall be completed by a voter who is unable to be present at the voting place to vote in person on the day of the specified election because of his sickness or other physical disability occurring since 5:00 P.M. on the Wednesday prior to the date of the specified election. (G.S. 163-226(2)).

Application OS shall be completed by a voter expecting to be absent from the county, or due to emergency disability will be unable to vote in person, or a person who qualifies under G.S. 163-226(a)(4), and who, in lieu of making application by mail, wishes to apply in person and receive a ballot which he may immediately vote in the office of the county board of elections.

(b) Forms of Applications; Instructions. —

(1) Expected Absence from County on Election Day; Form A. — A voter expecting to be absent from the county in which registered during the entire period that the polls will be open on primary or general election day, or a near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which

the voter is registered not earlier than 60 days nor later than 5:00 P.M. on the Wednesday before the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The applicant shall sign his application personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form. The application form when properly filled out shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or the supervisor of elections of the county board of elections.

(2) Absence for Sickness or Physical Disability Occurring before 5:00 P.M. on the Wednesday prior to the Primary or General Election; Form B. — A voter expecting to be unable to go to the voting place to vote in person on primary or general election day because of his sickness or other physical disability, or his near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 60 days nor later than 5:00 P.M. on the Wednesday before the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The application shall be signed by the voter personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form.

The application form, when properly filled out, shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or supervisor of elections of the county board of elections of the county in which the applicant is registered.

(3) Absence for Sickness or Physical Disability Occurring after 5:00 P.M. on the Wednesday prior to Primary or General Election; Form C. — A voter expecting to be unable to go to the voting place to vote in person on primary or general election day because of sickness or other disability occurring after 5:00 P.M. on the Wednesday before the election, or a near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which he is registered not later than 12:00 noon on the day preceding the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The chairman of the county board of elections shall not issue or accept an application under the provisions of this subdivision later than 12:00 noon on the day preceding the election in which the voter seeks to vote.

The application shall be signed by the voter personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness who shall sign his name in the place provided on the form.

The certificate printed on the application form below the signatures of the applicant and his subscribing witness shall be filled in and signed in the presence of a witness by a licensed physician who is attending the applicant. The witness to the physician's certificate shall sign his name in the place provided on the form.

The application form, when properly filled out, signed by or for the applicant in the presence of a subscribing witness as provided in this subdivision, and certified and signed by the attending physician in the presence of a subscribing witness, may be transmitted by mail to the chairman or supervisor of elections of the board of elections of the

county in which the applicant is registered, or it may be delivered to the chairman or supervisor of elections in person by the applicant or by his near relative.

(4) "One-Stop" Voting Procedure, in Office of the County Board of Elections; Form OS. — A voter falling in the category specified in G.S. 163-227.2 may execute Form OS and proceed to vote his absentee ballot in the office of the county board of elections only.

(c) Application Forms Issued by Chairman of County Board of Elections. — The chairman of the county board of elections shall be sole custodian of all absentee ballot application forms, but he, the secretary of the board and the supervisor of elections of the board, in accordance with one of the following two procedures, shall issue and deliver a single application form, upon request, to a person authorized to sign such an application under the provisions of this section:

(1) The chairman, secretary or supervisor of elections may deliver the form to a voter personally or to his near relative at the office of the county board of elections for the voter's own use; or

(2) The chairman, secretary or supervisor of elections may mail the form to a voter for his own use upon receipt of a written request from the voter or his near relative.

At the time he issues an application form, the chairman, secretary or supervisor of elections of the county board of elections shall number it and write the name of the voter in the space provided therefor at the top of the form. At the same time the chairman, secretary or supervisor of elections shall insert the name of the voter and the number assigned his application in the register of absentee ballot applications and ballots issued provided for in G.S. 163-228. If the application is requested by the voter's near relative, the chairman, secretary or supervisor of elections also shall insert that person's name in the register after the name of the voter.

The chairman, secretary or supervisor of elections shall issue only one application form to a voter or his near relative unless a form previously issued is returned to the chairman, secretary or supervisor of elections and marked "Void" by him. In such a situation, the chairman, secretary or supervisor of elections may issue another application form to the voter or a near relative, but he shall retain the voided application form in the board's records. If the application is requested by the voter's near relative, the chairman, secretary or supervisor of elections shall write the name of the near relative on the index of near relatives, applying for applications for absentee ballots; the index shall be in such form as may be prescribed or approved by the State Board of Elections; a separate index shall be maintained for each primary, general or special election in which absentee voting is allowed.

(3) Applications for Absentee Ballots Transmitted by Mail or in Person. — An application for absentee ballots shall be made and signed only by the voter desiring to use them or the voter's near relative and shall be valid only when transmitted to the chairman or supervisor of elections of the county board of elections by mail or delivered in person by the voter or his near relative.

(4) Who Is Authorized to Request Applications for Absentee Ballots. — A voter may personally request an application for absentee ballots or may cause such request to be made through a near relative. For the purpose of this Article, "near relative" means spouse, brother, sister, parent, grandparent, child, or grandchild.

(5) The form of application for persons applying to vote in a primary under the provisions of this section shall be as designed and prescribed by the State Board of Elections. No voter shall be furnished ballots for voting in a primary except the ballots for candidates for nomination in the

primary of the political party with which he is affiliated at the time he makes application for absentee ballots. The official registration records of the county in which the voter is registered shall be proof of the party, if any, with which the voter is affiliated.

(6) The county board of elections shall cause to be stamped or printed on the face of each application for absentee ballots the following legend, and the blank space in the legend to be completed:
"This application is issued for absentee ballots to be voted in the____ ____ (primary or general or special election) to be held in _____ ____ County on the _____ day of _____, 19 ____".
The county board of elections shall not issue any absentee ballots on the basis of any application that does not bear the completed legend.

(7) No applications shall be issued earlier than 60 days prior to the election in which the voter wishes to vote. Nothing herein shall prohibit the county board of elections from receiving written requests for applications earlier than 60 days prior to the election but such applications shall not be mailed or issued to the voter in person earlier than 60 days prior to the election.

(8) Applications for absentee ballots shall be issued only by mail or in the office of the county board of elections to the voter or a near relative authorized to make application. No election official shall issue applications for absentee ballots except in compliance with the provisions stated herein. (1939, c. 159, s. 2; 1943, c. 751, s. 1; 1963, c. 457, s. 2; 1967, c. 775, s. 1; c. 952, s. 3; 1971, c. 947, ss. 1-5; 1973, c. 536, s. 1; c. 1075, ss. 1-3; 1975, c. 19, s. 69; c. 844, s. 11; 1977, c. 469, s. 1; c. 626, s. 1; c. 680.)

Editor's Note. —
Session Laws 1977, c. 469, s. 1, effective with respect to elections held on or after Sept. 1, 1977, as amended by Session Laws 1977, c. 680, s. 1, rewrote this section.

Session Laws 1977, c. 626, s. 1, substituted references to the supervisor of elections for references to the executive secretary throughout the section.

§ 163-227.1. Second primary; applications for absentee ballots for voting in second primary. — A voter applying for an absentee ballot for a primary election who will be absent from the county of his residence on the day of the primary and second primary shall be permitted by the county board of elections to indicate such fact on his application and such voter shall automatically be issued an absentee ballot for the second primary if one is called. The county board of elections shall consider such indication a separate application for the second primary and, at the proper time, shall enter such voter's name in the absentee register along with the listing of other applicants for absentee ballots for the second primary.

In addition, a voter entitled to absentee ballots under the provisions of this Article who did not make application for the primary or who failed to apply for a second primary ballot at the time of application for a first primary ballot may apply for absentee ballots for a second primary not earlier than the day a second primary is called and not later than 5:00 P.M. on the Wednesday prior to the date on which the second primary is held.

All procedures with respect to absentee ballots in a second primary shall be the same as with respect to absentee ballots in a first primary except as otherwise provided by this section. (1973, c. 536, s. 1; 1977, c. 469, s. 1.)

Editor's Note. — The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, rewrote the first paragraph, inserted "who did not make application for the primary or who failed to apply for second primary ballot at the time of application for a

first primary ballot" following "this Article" in the second paragraph, substituted "5:00 P.M. on the Wednesday prior to the date on which the second primary is held" for "6:00 P.M. on the Wednesday immediately preceding the second primary election date" at the end of the second paragraph, and substituted "except as" for "unless" in the third paragraph.

§ 163-227.2. Alternate procedures for requesting application for absentee ballot; "one-stop" voting procedure in board office. — (a) A person expecting to be absent from the county in which he is registered during the entire period that the polls are open on the day of an election in which absentee ballots are authorized or is eligible under G.S. 163-226(a)(2) or 163-226(a)(4) may request an application for absentee ballots, complete the application, receive the absentee ballots, vote and deliver them sealed in a container-return envelope to the county board of elections in the county in which he is registered under the provisions of this section.

(b) Not earlier than 30 days before an election, in which absentee ballots are authorized, in which he seeks to vote and not later than 5:00 P.M. on the Thursday prior to that election, the voter shall appear in person only at the office of the county board of elections and request that the chairman, a member, or the supervisor of elections of the board, or an employee of the board of elections, authorized by the board, furnish him with application Form OS as specified in G.S. 163-227. The voter shall complete the application in the presence of the chairman, member, supervisor of elections or authorized employee of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the chairman, member, supervisor of elections of the board, or employee of the board of elections, authorized by the board, shall enter the voter's name in the register of absentee ballot applications and ballots issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); shall furnish the voter with the ballots to which the application for absentee ballots applies; and shall furnish the voter with a container-return envelope. The voter thereupon shall comply with the provisions of G.S. 163-231(a) except that he shall deliver the container-return envelope to the chairman, member, supervisor of elections of the board, or an employee of the board of elections, authorized by the board, immediately after making and subscribing the affidavit printed on the container-return envelope as provided in G.S. 163-229(b). All actions required by this subsection (c) shall be performed in the office of the board of elections. For the purposes of this section only, the chairman, member, supervisor of elections of the board, or full-time employee, authorized by the board, is authorized to administer the oath required for the affidavit on the container-return envelope, in such case, no seal shall be required, but the chairman, member, supervisor of elections of the board, or full-time employee, authorized by the board, shall sign and indicate the official title held by him or her, and shall charge no fee of any voter for taking the acknowledgment required under this section.

(d) Only the chairman, member or supervisor of elections of the board shall keep the voter's application for absentee ballots and the sealed container-return envelope in a safe place, separate and apart from other applications and container-return envelopes. At the first meeting of the board pursuant to G.S. 163-230(2) held after receipt of the application and envelope, the chairman shall comply with the requirements of G.S. 163-230(1) and 163-230(2) b. and c. If the voter's application for absentee ballots is approved by the board at that meeting, the application form and container-return envelope, with the ballots enclosed, shall be handled in the same maner and under the same provisions of law as applications and container-return envelopes received by the board under other provisions of this Article. If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at his residence address or at the address shown in the application for absentee ballots; and the board

chairman shall retain the container-return envelope in its unopened condition until the day of the primary or election to which it relates and on that day he shall destroy the container-return envelope and the ballots therein, without, however, revealing the manner in which the voter marked the ballots.

(e) The voter shall vote his absentee ballot in a voting booth and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote his absentee ballot in that room. The voting booth shall be in the office of the county board of elections. If the voter needs assistance in getting to and from the voting booth and in preparing and marking his ballots or if he is a blind voter, only a member of the county board of elections, the supervisor of elections, an employee of the board of elections authorized by the board, a near relative of the voter as defined in G.S. 163-227(c)(4), or the voter's legal guardian shall be entitled to assist the voter.

(f) Notwithstanding the exception specified in G.S. 163-67(b) counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with the daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163-227.2(b) and continuing until 5:00 P.M. on the Thursday prior to that election or primary. The boards of county commissioners shall provide necessary funds for the additional operation of the office during such time. (1973, c. 536, s. 1; 1975, c. 844, s. 12; 1977, c. 469, s. 1; c. 626, s. 1; 1979, c. 107, s. 14; c. 799, ss. 1-3.)

Editor's Note. —

The first 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, substituted the language beginning "an election in which absentee ballots" and ending "G.S. 163-227(a)(4) [163-226(a)(4)]" for "a statewide primary or a general election or county bond election" in subsection (a); in the first sentence of subsection (b), substituted "60 days before an election, in which absentee ballots are authorized" for "30 days before a primary or general election or county bond election," "5:00 P.M. on the Wednesday prior to" for "6:00 P.M. on the Wednesday before," inserted "only" following "in person," substituted the language beginning "or an employee of the board of elections" for "furnish him with the application for absentee ballots called for under G.S. 163-227(1)"; inserted "or authorized employee" in the second sentence of subsection (b); inserted the language beginning "of the board" and ending "by the board" in the first sentence of subsection (c); substituted the language beginning "executive secretary of the board" and ending "by the board" for "or executive secretary" in the second sentence of subsection (c); substituted "member, executive secretary of the board, or full-time employee, authorized by the board, is" for "a member or the executive secretary of the county board of elections are" and "member, executive secretary of the board, or full-time employee, authorized by the board" for "board member or executive secretary" in the fourth sentence of subsection (c); added "Only" to the beginning of subsection (d) and inserted "of the board" in the first sentence of subsection (d).

The second 1977 amendment substituted "supervisor of elections" for "executive secretary" in subsections (b), (c) and (d).

The first 1979 amendment substituted "G.S. 163-226(a)(2) or 163-226(a)(4)" for "G.S. 163-227(a)(2) or 163-227(a)(4)" near the middle of subsection (a).

The second 1979 amendment, effective Sept. 1, 1979, substituted "30 days" for "60 days" near the beginning of the first sentence of subsection (b), and substituted "Thursday" for "Wednesday" near the middle of that sentence. The amendment also added subsections (e) and (f).

§ 163-227.3. Date by which absentee ballots must be available for voting. — (a) The State Board of Elections shall provide absentee ballots of the kinds to be furnished by the State Board, to the county boards of elections 60 days prior to the date on which the election shall be conducted unless there shall exist an appeal before the State Board or the courts not concluded, in which case the State Board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. In every instance the State Board shall exert every effort to

provide absentee ballots, of the kinds to be furnished by the State Board, to each county by the date on which absentee voting is authorized to commence.

(b) Second Primary. — The State Board of Elections shall provide absentee ballots, of the kinds to be furnished by the State Board, as quickly as possible after the ballot information has been determined. (1973, c. 1275; 1977, c. 469, s. 1.)

Editor's Note. — The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, rewrote this section.

§ 163-228. Register of absentee ballot applications and ballots issued; a public record. — The State Board of Elections shall design an official register and provide a source of supply thereof from which the chairman of the county board of elections in each county of the State shall purchase a book to be called the register of absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this Article.

The register of absentee ballot applications and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time within 60 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection. (1939, c. 159, ss. 3, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 457, s. 3; 1965, c. 1208; 1967, c. 775, s. 1; c. 952, s. 4; 1973, c. 536, s. 1; 1977, c. 469, s. 1.)

Editor's Note. — The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, substituted "design an official register and provide a source of supply thereof from which the chairman of the county board of elections" for "furnish the chairman of the board of elections" and "shall purchase" for "with" in the first paragraph, and substituted "an election in which absentee ballots were authorized" for "a statewide primary, general election or county bond election" in the second paragraph.

§ 163-229. Absentee ballots, container-return envelopes, and instruction sheets. — (a) Absentee Ballot Form. — In accordance with the provisions of G.S. 163-230(3), persons entitled to vote by absentee ballot shall be furnished with regular official ballots. Separate or distinctly marked absentee ballots shall not be used.

(b) Container-Return Envelope. — In time for use not later than 60 days before a statewide primary, general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the chairman of the county board of elections. Each container-return envelope shall be printed in accordance with the following instructions:

(1) On one side shall be printed an identified space in which shall be inserted the application number of the voter and the following statement which shall be certified by one member of the county board of elections:

"Certification of Election Official

The undersigned election official does by his hand and seal certify that ..... is a registered and qualified voter of ..... County, Precinct # ..... and has made proper application to vote under the Absentee Ballot Law of North Carolina.

..... (Seal)

Chairman-Member"

(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following affidavit:

"Affidavit of Absentee or Sick Voter

State of .....

County of .....

I, ..., do solemnly swear that I am a resident and registered voter in ..... precinct, ... County, North Carolina; that on the day of an election, ..., 19.... (check whichever of the following statements is correct.)

( ) I will be absent from the county in which I reside.

( ) Due to sickness or physical disability, or incarceration as a misdemeanant, I will be unable to travel to the voting place in the precinct in which I reside.

I further swear that I made application for absentee ballots, and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instructions.

.....

(Signature of voter)

Sworn to and subscribed before me this ..... day of ....., 19....

.....

(Signature and seal of officer administering oath)

My commission (if any) expires

.....

.....

(Title of officer)"

Note: The acknowledgment of a member of the armed forces of the United States may be taken before any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces.

(c) Instruction Sheets. — In time for use not later than 60 days before a statewide primary, general or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the chairman of the county board of elections. (1929, c. 164, s. 39; 1939, c. 159, ss. 3, 4; 1943, c. 751, s. 2; 1963, c. 457, ss. 3, 4; 1965, c. 1208; 1967, c. 775, s. 1; c. 851, s. 1; c. 952, s. 5; 1973, c. 536, s. 1; 1975, c. 844, s. 13; 1977, c. 469, s. 1.)

Editor's Note. —

The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, substituted "60 days" for "30 days" in subsections (b) and (c), and in the affidavit in subdivision (b) (2), substituted "an election" for "the primary, general or bond election."

§ 163-230. Consideration and approval of applications and issuance of absentee ballots. — The procedure to be followed in receiving applications for absentee ballots, passing upon their validity, and issuing absentee ballots shall be governed by the provisions of this section.

(1) Record of Applications Received and Ballots Issued. — Upon receipt of a voter's written application for absentee ballots, the chairman of the county board of elections shall promptly enter in the register of absentee ballot applications and ballots issued so much of the following

information as he has not already entered there under the provisions of G.S. 163-227(4) [163-227(b)(4)]:

a. Name of voter applying for absentee ballots, and, if applicable, the name and address of the voter's near relative who applied for the application for absentee ballots.
b. Number of assigned voter's application when issued.
c. Precinct in which applicant is registered.
d. Address to which ballots are to be mailed, or that the voter voted pursuant to G.S. 163-227.2.
e. Reason assigned for requesting absentee ballots.
f. Date application for ballots is received by chairman.
g. The voter's party affiliation.

(2) Determination of Validity of Applications for Absentee Ballots. — The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chairman or any other member of the board individually.

a. Required Meeting of County Board of Elections. — During the period commencing 60 days before an election, and until 30 days before the election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each week on a day and at an hour to be determined by the board for the purpose of acting on applications for absentee ballots. Each member of the board shall be notified in writing of the day and hour such meetings shall be conducted. During the period opening 30 days before an election in which absentee ballots are authorized and closing at 5:00 P.M. on the Wednesday before the election, the county board of elections shall hold public meetings at 10:00 A.M. on Tuesday and Friday of each week, and it shall also hold public meetings at 10:00 A.M. on the eighth, fifth, third and first days immediately preceding election day. These meetings shall be held at the county courthouse or at the elections board's office at the hour fixed by law. At these meetings the county board of elections shall pass upon applications for absentee ballots.

Upon a majority vote, the county board of elections may hold the required public meetings at an hour other than 10:00 A.M., and it may hold more than one session on each Tuesday and Friday it is required to meet and may set the hours of any additional sessions. If the board desires to exercise either or both of the options granted by the preceding sentence, it shall do so prior to the date on which it is required to hold its first public meeting under the provisions of this subdivision and in time to give the notice required by the fourth paragraph of this lettered portion of this subdivision; thereafter, no change shall be made in the hours fixed for the board's public meetings on absentee ballot applications.

It shall not be necessary for the chairman of the county board of elections to give notice to other board members of weekly meetings of the board which are fixed as to time and place by this section.

If the county board of elections changes the time of holding its Tuesday and Friday meetings or provides for additional meetings on Tuesdays and Fridays in accordance with the terms of this subdivision, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county, and a notice thereof shall be posted at the courthouse door of the county, at least one week prior to the time fixed for holding the first meeting under this subdivision.

The county board of elections shall not be required to hold any of the meetings prescribed by this subdivision unless, since its last preceding meeting, it actually has received one or more applications for absentee ballots which it has not passed upon. When no meeting is to be held for this reason, the chairman shall notify each of the other members of the county board of elections that the scheduled public meeting will not be held and state the reasons for its cancellation.

b. Procedure at Required Meeting; Making Determination. — At each public meeting of the county board of elections the chairman shall present for consideration, and the board shall pass upon, the validity of all applications for absentee ballots received since its last preceding public meeting held for that purpose. In connection with each application received by mail the chairman shall also present the container-return envelope in which the application was received. At each such meeting any registered voter of the county shall be heard and allowed to present evidence in opposition to, or in favor of, the issuance of absentee ballots to any voter making application for them.

The county board of elections may consider the registration records as evidence of the voter's signature, if available, and as any other evidence that may be necessary to pass upon such an application, including the party affiliation of a voter seeking to vote in a primary.

If the board finds that the applicant is a qualified voter of the county, that he is registered in the precinct stated in his application, that the assertions in his application are true, and that his application is in proper form, it shall approve his application for absentee ballots.

c. Record of Board's Determination; Decision Final. — At the time the county board of elections makes its decision on an application for absentee ballots, the chairman shall enter in the appropriate column in the register of absentee ballot applications and ballots issued opposite the name of the applicant a notation of whether his application was "Approved" or "Disapproved".

The decision of the board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest.

(3) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. — When the county board of elections approves an application for absentee ballots, the chairman shall promptly issue and transmit them to the voter only, and not to his near relative, in accordance with the following instructions:

a. On the top margin of each ballot the applicant is entitled to vote, the chairman shall write or type the words "Absentee Ballot No. .." and insert in the blank space the number assigned the applicant's application in the register of applications for absentee ballots and ballots issued. He shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter.

b. The chairman shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, his application number and the designation of the precinct in which the voter is registered. The chairman shall leave the container-return envelope holding the ballots unsealed.

c. The chairman shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the applicant at the post office address stated in his application, seal the envelope, and mail it at the expense of the county board of elections, or deliver it to the applicant in person: Provided, that in case of approval of an application received after 5:00 P.M. on the Wednesday before the election under the provisions of G.S. 163-227(b)(3), in lieu of transmitting the ballots to the applicant in person or by mail, the chairman may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative of the voter. (1939, c. 159, s. 3; 1963, c. 457, s. 3; 1965, c. 1208; 1967, c. 775, s. 1; c. 952, s. 6; 1973, c. 536, s. 1; c. 1075, s. 4; 1975, c. 844, ss. 14, 19; 1977, c. 469, s. 1.)

Editor's Note. —

The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, in subdivision (2)a, added the present first and second sentences of the first paragraph, substituted "an election in which absentee ballots are authorized and closing at 5:00 P.M." for "a statewide primary, general election or county bond election and closing at 6:00 P.M.," "at 10:00 A.M. on Tuesday and Friday of each week" for "on Monday and Friday of each week at 10:00 A.M.," and "eighth" for "seventh" in the present third sentence of the first paragraph, substituted "Tuesday" for "Monday" in the first sentence of the second paragraph and in the fourth paragraph, and substituted "Tuesdays" for "Mondays" in the fourth paragraph. The amendment also substituted "container-return envelope" for "container envelope" in the second sentence of the first paragraph of subdivision (2)b, and in subdivision (3), substituted "5:00 P.M." for "6:00 P.M." and "G.S. 163-227(b)(3)" for "G.S. 163-227(3)" in paragraph (c).

§ 163-231. Voting absentee ballots and transmitting them to chairman of the county board of elections. — (a) Procedure for voting absentee ballots. — In the presence of an officer authorized to administer oaths, having an official seal, the voter shall:

(1) Mark his ballots, or cause them to be marked by such officer in his presence according to his instruction;

(2) Fold each ballot separately, or cause each of them to be folded in his presence;

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in his presence;

(4) Make and subscribe the affidavit printed on the container-return envelope according to the provisions of G.S. 163-229(b).

The officer administering the oath shall then complete the form on the container-return envelope and affix his seal, if any, in the place indicated. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the chairman of the county board of elections who issued the ballots.

In the case of voters who are members of the armed forces of the United States, as defined in G.S. 163-245, the signature of any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces, as a witness to the execution of any certificate required by this or any other section of this Article to be under oath shall have the force and effect of the jurat of an officer with a seal fully authorized to take and administer oaths in connection with absentee ballots.

(b) Transmitting executed absentee ballots to chairman of county board of elections. — The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the chairman of the county board of elections who issued them as follows: All ballots issued under the provisions

of Articles 20 and 21 of this Chapter shall be transmitted by mail, at the voter's expense, or delivered in person, or by the voter's spouse, brother, sister, parent, grandparent, child or grandchild not later than 5:00 P.M. on the day before the statewide primary or general election or county bond election. If such ballots are received later than that hour, they shall not be accepted for voting. (1939, c. 159, ss. 2, 5; 1941, c. 248; 1943, c. 736; c. 751, s. 1; 1945, c. 758, s. 5; 1963, c. 457, ss. 2, 5; 1967, c. 775, s. 1; 1971, c. 1247, s. 3; 1973, c. 536, s. 1; 1977, c. 469, s. 1; 1979, c. 799, s. 5.)

Editor's Note. — The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, substituted semicolons for periods at the end of subdivisions (1) through (3) of subsection (a), deleted "to" preceding "have this done" in subdivision (3) of subsection (a), and substituted "5:00 P.M." for "6:00 P.M." in the first sentence of subsection (b).

The 1979 amendment, effective Sept. 1, 1979, inserted "by such officer" near the middle of subdivision (1) of subsection (a).

§ 163-232. Certified list of executed absentee ballots; distribution of list. — The chairman of the county board of elections shall prepare, or cause to be prepared, a list in at least quadruplicate, of all absentee ballots returned to the county board of elections to be counted, which have been approved by the county board of elections. At the end of the list, the chairman shall execute the following certificate under oath:

"State of North Carolina
County of . . . . . .

I, ..., chairman of the . . . . . County board of elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the . . . . day of . . . . ., 19. . . ., which have been approved by the county board of elections. I further certify that I have issued ballots to no other persons than those listed herein, whose original applications or original applications made by near relatives are filed in the office of the county board of elections; and I further certify that I have not delivered ballots for absentee voting to any person other than the voter himself, by mail or in person, except as provided by law, in the case of approved applications received after 5:00 P.M. on the Wednesday before the election.

This the . . . . . day of . . . . . ., 19. . . ..

. . . . . .

(Signature of chairman of county board of elections)

Sworn to and subscribed before me this . . . . . day of . . . . . ., 19. . . .. Witness my hand and official seal.

. . . . . .

(Signature of officer administering oath)

. . . . . .

(Title of officer)"

No earlier than 3:00P.M. on the day before the election and no later than 10:00 A.M. on election day, the chairman shall cause one copy of the list of executed absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as "first-class" mail to the State Board of Elections, Post Office Box 1166, Raleigh, N.C. 27602. He shall retain one copy in the board office for public inspection and he shall cause two copies of the appropriate precinct list to be delivered to the registrar of each precinct in the county. The chairman shall be authorized to call upon the sheriff of the county to distribute the list to the precincts. In addition the chairman shall, upon request, provide a copy of the complete list to the chairman of each political party, recognized under the provisions of G.S. 163-96, represented in the county.

The registrar shall post one copy of the list immediately in a conspicuous location in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made to absentee ballots as provided in G.S. 163-89.

After the last person has voted, the registrar shall call the name of each person recorded on the list and enter an "A" in the appropriate voting square on the voter's permanent registration record. If such person is already recorded as having voted in that election, the registrar shall enter a challenge.

All lists required by this section shall be retained by the county board of elections for a period of four years after which they may then be destroyed. (1939, c. 159, s. 6; 1943, c. 751, s. 3; 1963, c. 457, s. 6; 1967, c. 775, s. 1; 1973, c. 536, s. 1; 1977, c. 469, s. 1.)

Editor's Note. — The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, in the first paragraph, substituted "or cause to be prepared, a list in at lease quadruplicate, of all absentee ballots returned to the county board of elections to be counted" for "a list, in quadruplicate, of all applications for absentee ballots received by him" in the first sentence, "the chairman" for "he" in the introductory language of the second sentence, "executed absentee ballots to be voted in the election to be conducted" for "applications filed with me for absentee ballots to be voted in the primary or general election or county bond election" in the first sentence of the oath, "are filed in the office of the county board of elections" for "are enclosed to be filed with the State Board of Elections" in the second sentence of the oath, and "5:00 P.M." for "6:00 P.M." in the second sentence of the oath. The amendment also rewrote the second paragraph and added the third through fifth paragraphs.

§ 163-233. Applications for absentee ballots; how retained. — The chairman of the county board of elections shall retain, in a safe place, the original of all applications made for absentee ballots and shall make them available to inspection by the State Board of Elections or to any person upon the directive of the State Board of Elections.

All applications for absentee ballots shall be retained by the county board of elections for a period of one year after which they may be destroyed. (1939, c. 159, s. 7; 1943, c. 751, s. 4; 1963, c. 457, s. 7; 1967, c. 775, s. 1; 1973, c. 536, s. 1; c. 1075, s. 5; 1977, c. 469, s. 1.)

Cross Reference. — For present provisions covering the subject matter of this section as it existed prior to the 1977 amendment, see § 163-232.

Editor's Note. — The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, rewrote this section.

§ 163-233.1. Withdrawal of absentee ballots not allowed. — No person shall be permitted to withdraw an absentee ballot after such ballot has been mailed to or returned to the county board of elections. (1973, c. 536, s. 1; 1977, c. 469, s. 1.)

Editor's Note. — The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, reenacted this section without change.

§ 163-234. Counting absentee ballots by county board of elections. — All absentee ballots returned to the chairman or supervisor of elections of the county board of elections in the container-return envelopes shall be retained by the chairman to be counted by the county board of elections as herein provided.

(1) Only those absentee ballots returned to the county board of elections no later than 5:00 P.M. on the day before election day in a properly executed container-return envelope shall be counted.

(2) The county board of elections shall meet at 5:00 P.M. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 P.M. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided he shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 P.M. and 5:00 P.M. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity. The board shall not announce the result of the count before 7:30 P.M.

(5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot.

After all ballots have been placed in the boxes, the counting process shall begin.

If a challenge transmitted to the board on canvass day by a registrar is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The chairman shall be responsible for the safekeeping of the pollbook of absentee voters.

(6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections, Raleigh, North Carolina 27602.

(1977, c. 469, s. 1; c. 626, s. 1.)

Editor's Note. —

The first 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, substituted "5:00 P.M." for "6:00 P.M." in subdivision (1), deleted "the" preceding "election day" in the first sentence of the first paragraph of subdivision (2), substituted "prescribed" for "provided" in the first sentence of subdivision (6), and added "27602" to the end of the second sentence of subdivision (6).

Subdivision (5) is also set out to correct two errors.

The second 1977 amendment substituted "supervisor of elections" for "executive secretary" in the introductory language.

As the rest of the section was not changed, only the introductory paragraph and subdivisions (1), (2), (5) and (6) are set out.

§ 163-236. Violations by chairman of county board of elections. — The chairman of the county board of elections shall be sole custodian of blank applications for absentee ballots, official ballots, and container-return envelopes for absentee ballots. He shall issue and deliver blank applications for absentee ballots in strict accordance with the provisions of G.S. 163-277(4) [163-227(c)].

The issuance of ballots to persons whose applications for absentee ballots have been approved by the county board of elections under the provisions of G.S. 163-230(3) is the responsiblity and duty of the chairman of the county board of elections.

It shall be the duty of the chairman of the county board of elections to keep current all records required of him by this Article and to make promptly all reports required of him by this Article.

The willful violation of the terms of this section shall constitute a misdemeanor, and upon conviction, the offender shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than 60 days, or both, in the discretion of the court. (1939, c. 159, s. 14; 1963, c. 457, s. 10; 1967, c. 775, s. 1; 1977, c. 469, s. 1.)

Editor's Note. — The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, reenacted this section without change except for an incorrect substitution of a reference to § 163-277 for a reference to § 163-227 at the end of the second sentence.

§ 163-237. Certain violations of absentee ballot law made criminal offenses. — (a) False statements under oath made misdemeanor. — If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement under oath, is required to be made by the provisions of this Article, he shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one hundred dollars ($100.00), or imprisoned for not less than 60 days, or both, in the discretion of the court.

(b) False statements not under oath made misdemeanor. — If any person, for the purpose of obtaining or voting any official ballot under the provisions of this Article, shall willfully sign any printed or written false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than 60 days, or both, in the discretion of the court.

(c) Fraud in connection with absentee vote; forgery. — Any person attempting to aid and abet fraud in connection with any absentee vote cast or to be cast, under the provisions of this Article, shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned, in the discretion of the court. Any person attempting to vote by fraudulently signing the name of a regularly qualified voter shall be guilty of forgery, and be punished accordingly.

(d) Violations not otherwise provided for made misdemeanors. — If any person shall willfully violate any of the provisions of this Article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, he shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars ($100.00), or imprisoned not less than six months, or both, in the discretion of the court. (1929, c. 164, s. 40; 1939, c. 159, ss. 12, 13, 15; 1967, c. 775, s. 1; 1977, c. 469, s. 1.)

Editor's Note. — The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, reenacted this section without change.

§ 163-238. Reports of violations to district attorneys. — It shall be the duty of the State Board of Elections to report to the district attorney of the appropriate prosecutorial district, any violation of this Article, or the failure of any person charged with a duty under its provisions to comply with and perform that duty, and it shall be the duty of the district attorney to cause such a person to be prosecuted therefor. (1939, c. 159, s. 16; 1967, c. 775, s. 1; 1977, c. 469, s. 1.)

Editor's Note. — The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, substituted "district attorney of the appropriate prosecutorial district" for "Attorney General of North Carolina, and to the solicitor of the appropriate solicitorial district" and "duty of the district attorney" for "duty of the solicitor."

§ 163-239. Article 21 relating to absentee voting by servicemen and certain civilians not applicable. — Except as otherwise provided therein, Article 21 of this Chapter, relating to absentee registration and voting by servicemen and certain civilians, shall not apply to or modify the provisions of this Article. (1963, c. 457, s. 11; 1967, c. 775, s. 1; 1977, c. 469, s. 1.)

Editor's Note. — The 1977 amendment, effective with respect to elections held on or after Sept. 1, 1977, reenacted this section without change.

ARTICLE 21.

Military Absentee Registration and Voting in Primary and General Elections.

§ 163-247. Methods of applying for absentee ballots. — An individual entitled to exercise the rights conferred by this Article and who is absent from the county of his residence may apply for absentee ballots in either of the ways provided in this section.

(1) Federal Postcard Application Form. — At any time prior to the statewide primary or general election in which he seeks to vote, the applicant may make and sign a written application to the Secretary of State for absentee ballots on the postcard form prescribed in Public Law 712 of the Seventy-seventh Congress. Upon receiving such an application, the Secretary of State shall record the applicant's name and residence address on a record maintained for that purpose and immediately send the application to the chairman of the board of elections of the county in which the applicant has his residence, together with instructions for handling the application under the provisions of this Article.

(1977, c. 265, s. 16.)

Editor's Note. — The 1977 amendment combined the former second and third sentences of subdivision (1) by substituting "send the application" for "transmit the application to the State Board of Elections" at the end of the former second sentence and for "Upon receiving such an application from the Secretary of State, the State Board of Elections shall transmit it" at the beginning of the former third sentence.

As subdivision (2) was not changed by the amendment, it is not set out.

§ 163-248. Register, ballots, container-return envelopes, and instruction sheets. — (a) Register of Military Absentee Ballot Applications and Ballots Issued. — The State Board of Elections shall furnish the chairman of the board of elections in each county of the State with a book to be called the register of military absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this Article. In lieu of furnishing this register, the State Board of Elections may provide for a separate military section in the register furnished under the provisions of G.S. 163-228 which shall be used for the same purpose.

The register of military absentee ballot applications and ballots issued, whether contained in a separate book or maintained as a separate part of the register furnished under the provisions of G.S. 163-228, shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time.

(b) Absentee Ballot Form. — Persons entitled to vote by absentee ballot under the terms of this Article shall be furnished with regular official ballots; separate or distinctly marked absentee ballots shall not be used. The State Board of Elections and the county boards of elections shall have all necessary absentee ballots printed and in the hands of the proper election officials not later than 60 days before the primary or election.

(c) Container-Return Envelope. — The county board of elections shall print a sufficient number of envelopes in which persons casting military absentee ballots may transmit their marked ballots to the chairman of the county board of elections. The container-return envelopes shall be printed and available for use not later than 60 days before the primary or election. Each container-return envelope shall be printed in accordance with the following instructions:

(1) On one side shall be arranged identified spaces in which the chairman of the county board of elections may insert the name of the applicant, the number assigned his application, and the designation of the precinct in which his ballots are to be voted.

(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

"Certificate of Absentee Voter

I, ..., do hereby certify that I am a resident and qualified voter in ..... precinct, ... County, North Carolina, and that I am [check whichever of the following statements is correct]

[ ] Serving in the armed forces of the United States

[ ] The spouse of a member of the armed forces of the United States residing outside the county of my spouse's residence

[ ] A disabled war veteran in a United States government hospital

[ ] A civilian attached to and serving outside the United States with the armed forces of the United States

[ ] A member of the Peace Corps

I further certify that I am affiliated with the ..... Party. [To be completed only if applicant seeks to vote in the primary of the political party to which he belongs.]

I further certify that the following is my official address:

.....

[Unit (Co., Sq., Trp., Bn., etc.), Governmental Agency, or Office]

.....

[Military Base, Station, Camp, Fort, Ship, Airfield, etc.]

.....

[Street number, APO, or FPO number]

.....

[City, postal zone, State, and zip code]

I further certify that I made application for absentee ballots and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instruction.

Witness my hand in the presence of ..... [Insert name and rank of witnessing officer] this ..... day of ....., 19....

.....

(Signature of voter)

Witness:.....

(Signature of witnessing officer)

Rank or title of witnessing officer: .....

Unit to which witnessing officer is assigned: .....

Note: This certificate may be witnessed by any commissioned officer or any noncommissioned officer of the rank of sergeant in the Army, petty officer in the Navy, or equivalent rank in other branches of the armed forces of the United States."

(d) Instruction Sheets. — The county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters covered by the provisions of this Article are to prepare absentee ballots and return them to the chairman of the county board of elections. The instruction sheets shall be printed and available for use not later than 60 days before the primary or election. (1929, c. 164, s. 39; 1941, c. 346, ss. 2, 3, 4, 5, 6; 1943, c. 503, s. 3; 1963, c. 457, ss. 12, 13, 14; 1967, c. 775, s. 1; 1973, c. 793, s. 72; 1975, c. 844, ss. 15-17; 1979, c. 411, s. 7.)

Editor's Note. —
The 1979 amendment substituted "60 days" for "30 days" near the end of the second sentences of subsection (b), (c), and (d).

§ 163-251. Certified list of approved military absentee ballot applications; record of ballots received; disposition of list; list constitutes registration.

(b) Distribution of List. — Before noon on the day of the primary or general election in which the military absentee ballots are to be cast, the chairman of the county board of elections shall send one copy of the list required by this section, by United States Mail to the chairman of the State Board of Elections at Raleigh, North Carolina. The chairman shall deliver two copies of the list to the appropriate precinct registrar and retain one copy for the county board. The registrar shall post one copy in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made as provided in G.S. 163-89.

After the last person has voted, the registrar shall call the name of each person recorded on the list and enter an "A" in the appropriate place on the voter's permanent registration record, if any. If such person is already recorded as voting in that election, the registrar shall enter a challenge.

(1977, c. 265, s. 17; 1979, c. 797, s. 3.)

Editor's Note. — The 1977 amendment substituted "United States Mail" for "registered mail" in the first sentence of subsection (b).

The 1979 amendment, effective Sept. 1, 1979, deleted "together with the original of all applications for military absentee ballots received by him" after "this section" near the end of the first sentence of the first paragraph of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 163-254. Registration and voting on primary or election day. — Notwithstanding any other provisions of Chapter 163 of the General Statutes, any person entitled to vote an absentee ballot pursuant to G.S. 163-245 shall be permitted to register in person at any time including the day of a primary or election. Should such person's eligibility to register or vote as provided in G.S. 163-245 terminate after the registration records have closed prior to a primary or election, such person, if he appears in person, shall be entitled to register if otherwise qualified during the time the records are closed, or on the primary or election day, and shall be permitted to vote if such person is otherwise qualified. (1977, c. 93.)

Editor's Note. — For survey of 1977 administrative law affecting state government, see 56 N.C. L. Rev. 867 (1978).

§ 163-255. Absentee voting at office of board of elections. — Notwithstanding any other provisions of Chapter 163 of the General Statutes,

any person eligible to vote an absentee ballot pursuant to G.S. 163-245 shall be permitted to vote an absentee ballot pursuant to G.S. 163-227.2 if the person has not already voted an absentee ballot which has been returned to the board of elections, and if he will not be in the county on the day of the primary or election.

In the event an absentee application or ballot has already been mailed to such person applying to vote pursuant to G.S. 163-227.2, the board of elections shall void the application and ballot unless the voted absentee ballot has been received by the board of elections. Such person shall be eligible to vote pursuant to G.S. 163-227.2 no later than 5:00 P.M. on the day next preceding the primary, second primary or election. (1977, c. 93; 1979, c. 797, s. 4.)

Editor's Note. — The 1979 amendment, effective Sept. 1, 1979, substituted "5:00 P.M." for "6:00 P.M." near the middle of the second sentence of the second paragraph.

§ 163-256. Regulations of State Board of Elections. — The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. 163-254 and 163-255, and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of G.S. 150A-9. (1977, c. 93.)

§§ 163-257, 163-258: Reserved for future codification purposes.

SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS.

ARTICLE 22.

Corrupt Practices and Other Offenses against the Elective Franchise.

§ 163-270. Using Funds of insurance companies for political purposes.

Insurance Company Contributions to Postelection Appreciation Breakfast for Commissioner of Insurance Permissible. — Summons drawn under this section and § 163-278.19 failed sufficiently to charge an offense within the ambit of these sections where insurance companies made contributions of money for an appreciation breakfast for the Commissioner of Insurance after his reelection. State v. Charlotte Liberty Mut. Ins. Co., 39 N.C. App. 557, 251 S.E.2d 867 (1979).

§ 163-271. Intimidation of voters by officers made misdemeanor.

Cited in McCollum v. Stahl, 579 F.2d 869 (4th Cir. 1978).

§ 163-274. Certain acts declared misdemeanors. — Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. It shall be unlawful:

(13) Except as authorized by G.S. 163-72.2(b), for any person to provide false information, or sign the name of any other person, to a written report under G.S. 163-72.2. (1931, c. 348, s. 9; 1951, c. 983, s. 1; 1967, c. 775, s. 1; 1979, c. 135, s. 3.)

Editor's Note. — The 1979 amendment, effective Sept. 1, 1979, added subdivision (13).

As the rest of this section was not changed by the amendment, only the introductory paragraph and subdivision (13) are set out.

§ 163-275. Certain acts declared felonies. — Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a felony and upon conviction shall be imprisoned in the State's prison not less than four months or fined not less than one thousand dollars ($1,000), or both, in the discretion of the court. It shall be unlawful:

(14) Any officer authorized by G.S. 163-80 to register voters and any other individual who knowingly and willfully receives, completes, or signs an application to register from any voter contrary to the provisions of G.S. 163-72 shall be guilty of a felony and, upon conviction, shall be imprisoned not less than four months or fined not less than one thousand dollars ($1,000), or both, in the discretion of the court. (1901, c. 89, s. 13; Rev., s. 3401; 1913, c. 164, s. 2; C. S., s. 4186; 1931, c. 348, s. 10; 1943, c. 543; 1965, c. 899; 1967, c. 775, s. 1; 1979, c. 539, s. 4.)

Editor's Note. — The 1979 amendment, effective Sept. 1, 1979, added subdivision (14).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (14) are set out.

§ 163-278.6. Definitions. — When used in this Article:

(1) The term "board" means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda.

(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, from any person or individual, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution, in support of or in opposition to any candidate, political committee, referendum committee, or political party. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee.

(8) The term "election" means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term "election" shall not include any local or statewide referendum.

(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, from any person or individual, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, in support of or in opposition to any candidate, political committee, referendum committee, or political party.

(18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan, provided candidates for municipal and county offices in those municipalities and counties having less than 50,000 population, according to the most recent decennial census figures, shall not be required to file reports required by this Article, but this Article shall otherwise be applicable to such candidates for municipal and county offices.

(18a) The term "referendum" means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly and includes constitutional amendments and State bond issues. The term "referendum" does not include any type of municipal, county, or special district referendum.

(18b) The term "referendum committee" means a combination of two or more individuals or any business entity, corporation, insurance company, labor union, professional association, committee, association, or organization, the primary or incidental purpose of which is to support or oppose the passage of any referendum on the ballot, or to influence or attempt to influence the result of a referendum, or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the outcome of any referendum.

(19) The term "treasurer" means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S. 163-278.7. (1973, c. 1272, s. 1; 1975, c. 798, ss. 5, 6; 1979, c. 500, s. 1; c. 1073, ss. 1-3, 19, 20.)

Editor's Note. —

The first 1979 amendment added "but this Article shall otherwise be applicable to such candidates for municipal and county offices" at the end of subdivision (18).

The second 1979 amendment added the second sentence to subdivision (1), inserted "referendum committee" near the end of the first sentence of subdivision (6), substituted "political committee, or referendum committee" for "or political committee" at the end of the third sentence of subdivision (6), deleted the exception for bond elections unless the act calling for such an election specifically stated that it would be covered by this Article formerly at the end of the second sentence of subdivision (8), inserted "referendum committee" near the end of subdivision (9), added subdivisions (18a) and (18b), and substituted "political committee, or referendum committee" for "or political committee" near the middle of subdivision (19).

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

Only the introductory paragraph and the subdivisions added or changed by the amendments are set out.

Quoted in State v. Charlotte Liberty Mut. Ins. Co., 39 N.C. App. 557, 251 S.E.2d 867 (1979).

ARTICLE 22A.

Regulating Contributions and Expenditures in Political Campaigns.

§ 163-278.7. Appointment of political treasurers. — (a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1) a statement of organization that includes:

(1) The name, address and purpose of the candidate, political committee, or referendum committee, and when the political committee is created pursuant to G.S. 163-278.19(b), the purpose of the political committee shall include the name of the corporation, insurance company, business entity, labor union or professional association whose officials, employees, or members established the political committee;

(2) The names, addresses, and relationships of affiliated or connected candidates, political committees, referendum committees, political parties, or similar organizations;

(3) The territorial area, scope, or jurisdiction of the candidate, political committee, or referendum committee;

(4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;

(5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;

(5a) The name of the referendum(s) which the referendum committee is supporting or opposing, and whether the committee is supporting or opposing the referendum;

(6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political or political party;

(7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used;

(8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the treasurer, who shall be fully responsible for any act or acts committed by an assistant treasurer, and the treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and

(9) Any other information which might be requested by the Board that deals with the compaign organization of the candidate or referendum committee.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10-day period following the change.

(d) A candidate, political committee or referendum committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate, political committee or referendum committee shall

appoint a successor within 10 days of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment. (1973, c. 1272, s. 1; 1979, c. 500, s. 2; c. 1073, ss. 4, 5, 16, 18, 20.)

Editor's Note. — The first 1979 amendment added the language beginning "and when the political committee" at the end of subdivision (1) of subsection (b).

The second 1979 amendment substituted "political committee, and referendum committee" for "and political committee" near the beginning of the first sentence in subsection (a). In subsection (b) the amendment substituted "political committee, or referendum committee" for "or political committee" near the beginning of subdivision (1), inserted "referendum committees" near the middle of subdivision (2), substituted "political committee, or referendum committee" for "or political committee" at the end of subdivision (3), added subdivision (5a), and added "or referendum committee" at the end of subdivision (9). The amendment also substituted "political committee, or referendum committee" for "or political committee" in the first and second sentences of subsection (d).

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

§ 163-278.8. Detailed accounts to be kept by political treasurers. — (a) The treasurer of each candidate, political committee, and referendum committee shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate, political committee, or referendum committee.

(b) Accounts kept by the treasurer of a candidate, political committee, or referendum committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. 163-278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(g) All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers. (1973, c. 1272, s. 1; 1977, c. 635, s. 1; 1979, c. 1073, ss. 16, 20.)

Editor's Note. — The 1977 amendment added subsection (g).

The 1979 amendment inserted the references to referendum committee in subsections (a) and (b).

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

As the rest of the section was not changed by the amendments, only subsections (a), (b), and (g) are set out.

For survey of 1979 administrative law affecting state government, see 56 N.C. L. Rev. 867 (1978).

§ 163-278.9. Statements filed with Board. — (a) The treasurer of each candidate and of each political committee shall file under verification with the Board the following reports:

(1) Organizational Report. — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files his notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the board stating such fact at the time required herein for the organizational

report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

(2) Preprimary Report. — The treasurer shall file a report with the Board no later than the tenth day preceding the primary election.

(3) Postprimary Report(s). — The treasurer shall file a report with the Board no later than the tenth day after the primary election. If there is a second primary or runoff election, a report shall be filed no later than the tenth day after the second primary or runoff election by candidates or committees involved therein.

(4) Preelection Report. — The treasurer shall file a report with the Board not later than the tenth day preceding the general election.

(5) Final Report. — The treasurer shall file a final report no later than the tenth day after the general election. If the final report fails to disclose a final accounting of all contributions and expenditures, a supplemental final report shall be filed no later than January 7, after the general election, and shall be current through December 31 after the general election.

(6) Annual Reports. — If contributions are received or expenditures made during a calendar year for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by January 7 of the following year.

(d) Candidates and committees in municipalities required to submit reports, as defined in G.S. 163-278.6(18), shall file all reports due under this Article with the county board of elections in the county in which the municipality is located, notwithstanding any provisions to the contrary that might be contained in any city charter. Filing reports, as required by this Article, by such candidates and committees shall constitute compliance with filing requirements for municipal candidates and committees.

(e) Notwithstanding subsections (a) through (c) of this section, any political party (including a State, district, county, or precinct committee thereof) which is required to file reports under those subsections and under the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 434) shall instead of filing the reports required by those subsections, file with the State Board of Elections:

(1) The organizational report required by subsection (a)(1) of this section, and

(2) A copy of each report required to be filed under 2 U.S.C. 434, such copy to be filed on the same day as the federal report is required to be filed.

(f) Any report filed under subsection (e) of this section may include matter required by the federal law but not required by this Article.

(g) Any report filed under subsection (e) of this section must contain all the information required by G.S. 163-278.8 or G.S. 163-278.11, notwithstanding that the federal law may set a higher reporting threshold.

(h) Any report filed under subsection (e) of this section may reflect the cumulative totals required by G.S. 163-278.11 in an attachment, if the federal law does not permit such information in the body of the report.

(i) Any report or attachment filed under subsection (e) of this section must be made under oath. (1973, c. 1272, s. 1; 1975, c. 565, s. 1; 1979, c. 500, ss. 3, 16; c. 730.)

Editor's Note. —

The first 1979 amendment added the second sentence of subdivision (1) of subsection (a), and added subsection (d).

The second 1979 amendment added subsections (e), (f), (g), (h), and (i).

As subsections (b) and (c) were not changed by the amendments, they are not set out.

§ 163-278.9A. Statements filed by referendum committees. — (a) The treasurer of each referendum committee shall file under verification with the Board the following reports:

(1) Organizational Report. — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures shall be filed with the Board no later than the tenth day following the organization of the referendum committee.

(2) Pre-Referendum Report. — The treasurer shall file a report with the Board no later than the tenth day preceding the referendum.

(3) Final Report. — The treasurer shall file a final report no later than the tenth day after the referendum. If the final report fails to disclose a final accounting of all contributions and expenditures, a supplemental final report shall be filed no later than January 7, after the referendum, and shall be current through December 31 after the referendum.

(4) Annual Reports. — If contributions are received or expenditures made during a calendar year for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by January 7 of the following year.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported. (1979, c. 1073, s. 6.)

Editor's Note. — Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

§ 163-278.10. Procedure for inactive candidate or committee. — If no contribution is received or expenditure made by or on behalf of a candidate, political commitee, or referendum commitee during a period described in G.S. 163-278.9, the treasurer shall file with the Board, at the time required by G.S. 163-278.9, a statement to that effect and it shall not be required that any inactive candidate or committee so filing a report of inactivity file any additional reports required by G.S. 163-278.9 so long as the candidate or committee remains inactive. (1973, c. 1272, s. 1; 1979, c. 1073, s. 20.)

Editor's Note. — The 1979 amendment substituted "political committee, or referendum committee" for "or political committee" near the beginning of the section. The 1979 act did not amend this section to refer to new § 163-278.9A.

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

§ 163-278.11. Contents of treasurer's statement of receipts and expenditures. — (a) Statements filed pursuant to provisions of this Article shall set forth the following:

(1) Contributions — A list of all contributions required to be listed under G.S. 163-278.8 received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board.

(2) Expenditures — A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board.

(3) Loans — Every candidate and treasurer shall attach to the campaign transmittal submitted with each report an addendum listing all proceeds derived from loans for funds used or to be used in this campaign. The addendum shall be in the form as prescribed by the State Board of Elections and shall list the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. (1973, c. 1272, s. 1; 1977, c. 635, s. 2; 1979, c. 1073, s. 20.)

Editor's Note. — The 1977 amendment added subdivision (3) to subsection (a).

The 1979 amendment substituted "political committee, or referendum committee" for "or political committee" at the end of the first sentences of subdivisions (1) and (2) of subsection (a).

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

For survey of 1977 administrative law affecting state government, see 56 N.C. L. Rev. 867 (1978).

§ 163-278.12. Contributions and expenditures by an individual other than a candidate. — Subject to G.S. 163-278.16(f) and 163-278.14, it shall be permissible for an individual other than a candidate to make contributions or expenditures in support of, or in opposition to, any candidate, political committee, or referendum committee other than by contribution to a candidate, political committee, or referendum committee. In the event an individual makes contributions or expenditures, other than by contribution to a candidate, political committee, or referendum committee, in excess of one hundred dollars ($100.00), then, within 10 days after making such a contribution or expenditure, he shall file a statement of such contribution or expenditure with the Board in accordance with the terms and conditions of G.S. 163-278.11. (1973, c. 1272, s. 1; 1979, c. 107, s. 15; c. 1073, s. 20.)

Editor's Note. — The first 1979 amendment substituted "G.S. 163-278.16(f)" for "G.S. 163-278.16(e)" near the beginning of the section.

The second 1979 amendment substituted "political committee, or referendum committee" for "or political committee" at the end of the first sentence and near the middle of the second sentence.

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

§ 163-278.13. Limitation on contributions.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(f) Any individual, candidate, political committee, or referendum committee who violates the provisions of this section is guilty of a misdemeanor and shall be fined not more than one thousand dollars ($1,000), or imprisoned for not more than one year, or be both fined and imprisoned. (1973, c. 1272, s. 1; 1979, c. 1073, ss. 8, 20.)

Editor's Note. — The 1979 amendment added subsection (e1), and substituted "political committee, or referendum committee" for "or political committee" near the beginning of subsection (f).

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

As the rest of the section was not changed by the amendment, only subsections (e1) and (f) are set out.

§ 163-278.14. No contributions in names of others; no anonymous contributions; contributions in excess of one hundred dollars. — (a) No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously except as provided in G.S. 163-278.8(d). If a candidate, political committee, referendum committee, political party, or treasurer receives any such contributions, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the general fund of the State of North Carolina.
(1979, c. 1073, s. 19)

Editor's Note. — The 1979 amendment inserted "referendum committee" near the beginning of the first and second sentences of subsection (a).

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

As subsection (b) was not changed by the amendment, it is not set out.

§ 163-278.16. Regulations regarding contributions, expenditures and media advertising. — (a) Except as provided in G.S. 163-278.12, no contribution may be received or expenditure made by or on behalf of a candidate, political committee, or referendum committee:

(1) Until the candidate, political committee, or referendum committee appoints a treasurer and certifies the name and address of the treasurer to the Board; and

(2) Unless the contribution is received or the expenditure made by or through the treasurer of the candidate, political committee, or referendum committee.

(b) to (e) Repealed by Session Laws 1975, c. 565, s. 2.

(f) No advertisement of any kind may be made by a treasurer, candidate, political committee, referendum committee or individual in the case of the media unless it bears the legend or includes the statement (Paid for or sponsored) by ..... (Name of candidate, political committee, individual). The media shall not publish or broadcast any political advertisement unless it bears the legend or includes the statement required herein. (1973, c. 1272, s. 1; 1975, c. 565, s. 2; 1979, c. 500, s. 4; c. 1073, ss. 19, 20.)

Editor's Note. —

The first 1979 amendment added the last sentence to subsection (f).

The second 1979 amendment substituted "political committee, or referendum committee" for "or political committee," in three places in subsection (a), at the end of the introductory paragraph, near the beginning of subdivision (1), and at the end of subdivision (2). The amendment also inserted "referendum committee" near the beginning of the first sentence of subsection (f).

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

§ 163-278.17. Statements of media receiving campaign expenditures. — (a) Each media shall file a report with the Board, no later than the tenth day after the first primary, and within 10 days after a second primary. Each media shall file a report with the Board no later than the tenth day after the general election, and, additionally, shall file a supplemental report no later than January 7 after the general election which shall be current as of December 31 after the general election. Each report shall show all expenditures not shown on any prior report required to be filed by the media under this Article, and each report shall include the following information:

(1) The name and address of each candidate, treasurer or individual making or authorizing an expenditure for media purposes;
(2) The candidate, political committee or political party on whose behalf the expenditure was made or authorized and the political office(s) with respect to which the candidate, treasurer or individual made the expenditure;
(3) With respect to each candidate, treasurer or individual making or authorizing an expenditure, the amount and date of each expenditure and the total amount of all expenditures from each candidate, treasurer or individual; and
(4) The name and address of any public relations firm or agency which makes direct payment to the media on behalf of any candidate, treasurer, political committee, political party or individual.

Except as otherwise provided, the media reports shall be current within seven days of the date the report is due. No report shall be necessary if no expenditures have been made in the period for which the report is due.

The reports required by this subsection shall be only for the offices of Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. The written authorization for each expenditure and the legend for each advertisement shall be required as to all candidates and political committees covered by this Article.

(c) No media reports are required in a referendum. (1973, c. 1272, s. 1; 1975, c. 565, s. 3; 1979, c. 500, ss. 5, 6; c. 1073, s. 9.)

Editor's Note. —

The first 1979 amendment, in subsection (a), transferred "and" from the end of subdivision (2) to the end of subdivision (3), added subdivision (4), and added the last paragraph.

The second 1979 amendment added subsection (c).

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

As subsection (b) was not changed by the amendments, it is not set out.

§ 163-278.18. Normal commercial charges for political advertising. — (a) No media and no supplier of materials or services shall charge or require a candidate, treasurer, political party, or individual to pay a charge for advertising, materials, space, or services purchased for or in support of or in opposition to any candidate, political committee, or political party that is higher than the normal charge it requires other customers to pay for comparable advertising, materials, space, or services purchased for other purposes.

(b) A newspaper, magazine, or other advertising medium shall not charge any candidate, treasurer, political committee, political party, or individual for any advertising for or in support of or in opposition to any candidate, political committee or political party at a rate higher than the comparable rate charged to other persons for advertising of comparable frequency and volume; and every candidate, treasurer, political party or individual, with respect to political advertising, shall be entitled to the same discounts afforded by the advertising medium to other advertisers under comparable conditions and circumstances. (1973, c. 1272, s. 1; 1977, c. 856.)

Editor's Note. — The 1977 amendment designated the provisions of this section as subsection (a) and added subsection (b).

§ 163-278.19. Violations by corporations, business entities, labor unions, professional associations and insurance companies.

(e) Notwithstanding the prohibitions specified in this Article and Article 22 of this Chapter, a political committee organized under provisions of this Article shall be entitled to receive and the corporation, business entity, labor union, professional association, or insurance company designated on the committee's organizational report as the parent entity of the employees or members who organized the committee is authorized to give reasonable administrative support that shall include, but not be limited to, record keeping, computer services, billings, mailings to members of the committee, and such other support as is reasonably necessary for the administration of the committee.

The approximate cost of any record keeping, computer services, billings, mailings, office supplies, and office space provided on a continuing basis shall be submitted to the committee, in writing, and the committee shall include that cost on the annual report required by G.S. 163-278.9(a) (e) [163-278.9(a)(6)]. Also included in the report shall be the approximate allocable portion of the compensation of any officer or employee of the corporation, business entity, labor union, professional association, or insurance company who has devoted more than thirty-five percent (35%) of his time during normal business hours of the corporation, business entity, labor union, professional association, or insurance company during the period covered by the required report. The approximate cost submitted by the parent corporation, business entity, labor union, professional association, or insurance company shall be entered on the committee's annual report as the final entry on its list of "contributions" and a copy of the written approximate cost received by it shall be attached.

The administrative support given by a corporation, business entity, labor union, professional association, or insurance company shall be designated on the books of the corporation, business entity, labor union, professional association, or insurance company as such and may not be treated by it as a business deduction for State income tax purposes. (1973, c. 1272, s. 1; 1975, c. 565, s. 6; 1979, c. 517, ss. 1, 2.)

Editor's Note. —

The 1979 amendment added subsection (e).

Constitutionality. — This section is constitutional on its face and as applied to construe the plaintiff's payment of the defendant's advertising expenses as advances prohibited by the section since the prohibition thereof constitutes only a minimal intrusion on plaintiff's constitutional rights, and is clearly reasonable in light of the purposes to be accomplished by the section. Louchheim, Eng & People, Inc. v. Carson, 35 N.C. App. 299, 241 S.E.2d 401 (1978).

The purposes of this section are identical to those of its federal counterpart, namely, to protect the populace from undue influence by corporations and labor unions, and to insure the responsiveness of elected officials to the public at large. Louchheim, Eng & People, Inc. v. Carson, 35 N.C. App. 299, 241 S.E.2d 401 (1978); State v. Charlotte Liberty Mut. Ins. Co., 39 N.C. App. 557, 251 S.E.2d 867 (1979).

The advance of money or anything of value to a political candidate by a corporation, labor union or business entity constitutes an illegal contribution or expenditure within the meaning of this section. Louchheim, Eng & People, Inc. v. Carson, 35 N.C. App. 299, 241 S.E.2d 401 (1978).

Contributions by Insurance Companies to Appreciation Breakfast for Newly Reelected Insurance Commissioner Permissible. — Summons drawn under § 163-270 and this section failed sufficiently to charge an offense within the ambit of these sections where insurance companies made contributions of money for an appreciation breakfast for the Commissioner of Insurance after his reelection. State v. Charlotte Liberty Mut. Ins. Co., 39 N.C. App. 557, 251 S.E.2d 867 (1979).

§ 163-278.19A. Contributions allowed. — Notwithstanding any other provision of this Chapter, it is lawful for any person as defined in G.S. 163-278.6(13) to contribute to a referendum committee. (1979, c. 1073, s. 7.)

Editor's Note. — Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

§ 163-278.20. Disclosure before soliciting contributions. — (a) It shall be unlawful for one or more individuals acting in concert, or for any group, committee, club or organization, of any type or nature, of two or more individuals, to solicit, attempt to solicit, or receive contributions for the purpose of supporting a candidate, political committee, referendum committee, or political party without first clearly advising those solicited as follows:

(1) The name of the candidate(s) for whom the contribution will be used; or

(2) The name of the political committee or party for which the funds will be used; or

(3) That a decision will be reached later as to the candidate(s), political committee(s), or political party(ies) to be supported and that the contributions solicited will be expended in a manner and for a purpose to be determined at a future date but no later than 20 days prior to the pending primary or general election; or

(4) The name of the referendum committee for which the funds will be used.

(b) A violation of this section shall be punishable by a fine not less than one hundred dollars ($100.00) nor more than five thousand dollars ($5,000), or imprisonment of not more than one year, or by both fine and imprisonment. (1973, c. 1272, s. 1; 1979, s. 1073, ss. 10, 19.)

Editor's Note. — The 1979 amendment inserted "referendum committee" near the end of the introductory paragraph of subsection (a), added "or" at the end of subdivision (3) of subsection (a), and added subdivision (4) of subsection (a).

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

§ 163-278.22. Duties of State Board. — It shall be the duty and power of the State Board:

(5) To preserve reports and statements filed under this Article. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural Resources, Division of Archives and History, and shall be preserved for a period of 10 years.

(8) After investigation, to report apparent violations by candidates, political committees, referendum committees, individuals or persons to the proper district attorney as provided in G.S. 163-278.27.

(10) To instruct the chairman and supervisors of elections of each county board as to their respective duties and responsibilities relative to the administration of this Article.

(1977, c. 626, s. 1; 1979, c. 500, ss. 9, 12, 13; c. 1073, s. 18.)

Editor's Note. —

The 1977 amendment substituted "supervisors of elections" for "executive secretaries" in subdivision (10).

The first 1979 amendment inserted "State" near the end of the introductory paragraph, substituted the present subdivision (5) for one which read "To preserve such statements and other information for a period of five years from date of receipt," and substituted "district attorney" for "solicitors (district attorney)" near the end of subdivision (8).

The second 1979 amendment inserted "referendum committees" near the middle of subdivision (8).

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (5), (8), and (10) are set out.

§ 163-278.23. Duties of Executive Secretary-Director of Board. — The Executive Secretary-Director of the Board shall inspect or cause to be inspected each statement filed with the Board under this Article within 30 days after the date it is filed. The Executive Secretary-Director shall advise, or cause to be advised, no more than 15 days and at least five days before each report is due, each candidate or treasurer whose organizational report has been filed, of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, political committee, referendum committee, or media required to file a statement under this Article if:

(1) It appears that the individual, candidate, treasurer, political committee, referendum committee or media has failed to file a statement as required by law or that a statement filed does not conform to this Article; or

(2) A written complaint is filed under oath with the Board by any registered voter of this State alleging that a statement filed with the Board does not conform to this Article or to the truth or that an individual, candidate, treasurer, political committee, referendum committee or media has failed to file a statement required by this Article.

The Executive Secretary-Director of the Board of Elections shall issue written rulings to candidates and may issue written rulings to the communications media, political committees, and referendum committees upon request, regarding filing procedures and compliance with this Article. Any such ruling so issued shall specifically refer to this paragraph. If the candidate, communications media, political committees, or referendum committees rely on and comply with the ruling of the Executive Secretary-Director of the Board of Elections, then prosecution on account of the procedure followed pursuant thereto and prosecution for failure to comply with the statute inconsistent with the written ruling of the Executive Secretary-Director of the Board of Elections issued to the candidate or committee involved shall be barred. Nothing in this paragraph shall be construed to prohibit or delay the regular and timely filing of reports. (1973, c. 1272, s. 1; 1975, c. 334; c. 565, s. 4; 1979, c. 500, s. 7; c. 1073, ss. 12, 13, 17.)

Editor's Note. —

The first 1979 amendment substituted "30 days" for "10 days" near the end of the first sentence in the first paragraph.

The second 1979 amendment inserted "referendum committee" near the middle of the third sentence of the first paragraph, near the middle of subdivision (1), and near the end of subdivision (2); substituted "political committees, and referendum committees" for "and political committees" near the middle of the first sentence of the last paragraph, substituted "political committees, or referendum committees" for "or political committees" near the beginning of the third sentence of that paragraph, and inserted "or committee" near the end of that sentence.

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

§ 163-278.24. Statements examined within four months. — Within four months after the date of each election or referendum, the Executive Secretary-Director shall examine or cause to be examined each statement filed with the Board under this Article, and, referring to the election or referendum, determine whether the statement conforms to law and to the truth. Such examination shall include a comparison of reports and statements submitted by a treasurer and those required from media pursuant to G.S. 163-278.17. (1973, c. 1272, s. 1; 1979, c. 500, s. 8; c. 1073, s. 14.)

Editor's Note. — The first 1979 amendment substituted "four months" for "three months" near the beginning of the first sentence.

The second 1979 amendment inserted "or referendum" near the beginning and near the end of the first sentence.

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

§ 163-278.26. Appeals from State Board of Elections; early docketing.

Editor's Note. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

§ 163-278.27. Penalty for violations; duty to report and prosecute. — (a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who violates the provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17, or 163-278.18, is guilty of a misdemeanor and shall be fined not more than one thousand dollars ($1,000) if an individual, and not more than five thousand dollars ($5,000) if a person other than an individual, or imprisoned for not more than one year, or be both fined and imprisoned.

(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

(1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;

(2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;

(3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and

(4) In the case of a person or any group of individuals: report to the district attorney or district attorneys [of] the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

(c) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article. (1973, c. 1272, s. 1; 1979, c. 500, s. 10; c. 1073, ss. 15, 19.)

Editor's Note. — The first 1979 amendment substituted "district attorney" for "solicitor (district attorney)" throughout subsections (b) and (c), substituted "prosecutorial" for "solicitorial" throughout subsection (b), and substituted "district attorneys" for "solicitors (district attorneys)" near the middle of subdivision (4) of subsection (b).

The second 1979 amendment inserted "referendum committee" near the beginning of subsection (a), and "referendum committees" near the middle of subdivision (3) of subsection (b). The second 1979 act did not amend this section to refer to new § 163-278.9A.

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

§ 163-278.28. Issuance of injunctions; special prosecutors named. — (a) The superior courts of this State shall have jurisdiction to issue injunctions or grant any other equitable relief appropriate to enforce the provisions of this Article upon application by any registered voter of the State.

(b) If the Board makes a report to a district attorney under G.S. 163-278.27 and no prosecution is initiated within 45 days after the report is made, any registered voter of the prosecutorial district to whose district attorney a report has been made, or any board of elections in that district, may, by verified affidavit, petition the superior court for that district for the appointment of a special prosecutor to prosecute the individuals or persons who have or who are believed to have violated any section of this Article. Upon receipt of a petition for the appointment of a special prosecutor, the superior court shall issue an order to show cause, directed at the individuals or persons alleged in the petition to be in violation of this Article, why a special prosecutor should not be appointed. If there is no answer to the order, the court shall appoint a special prosecutor. If there is an answer, the court shall hold a hearing on the order, at which both the petitioning and answering parties may be heard, to determine whether a prima facie case of a violation and failure to prosecute exists. If there is such a prima facie case, the court shall so find and shall thereupon appoint a special prosecutor to prosecute the alleged violators. The special prosecutor shall take the oath required of assistant district attorneys by G.S. 7A-63, shall serve as an assistant district attorney pro tem of the appropriate district, and shall prosecute the alleged violators. (1973, c. 1272, s. 1; 1979, c. 500, s. 11.)

Editor's Note. — The 1979 amendment, in subsection (b), substituted "district attorney" for "solicitor (district attorney)" in two places in the first sentence and near the end of the sixth sentence, and substituted "prosecutorial" for "solicitorial" in the first sentence and "district attorneys" for "solicitors (district attorneys)" near the middle of the sixth sentence.

§ 163-278.30. Candidates for federal offices to file information reports. — Candidates for nomination in a party primary or for election in a general or special election to the offices of United States Senator, member of the United States House of Representatives, President or Vice-President of the United States shall file with the Board all reports they or political committee treasurers or other agents acting for them are required to file under the Federal Election Campaign Act of 1971, P.L. 92-225, as amended (T. 2, U.S.C. section 439). Those reports shall be filed with the Board at the times required by that act. The Board shall, with respect to those reports, have the following duties only:

(2) To preserve reports and statements filed under the Federal Election Campaign Act. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural Resources, Division of Archives and History, and shall be preserved for a period of 10 years or for such period as may be required by federal law.

(1979, c. 500, s. 14.)

Editor's Note. — The 1979 amendment rewrote subdivision (2).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (2) are set out.

§ 163-278.34. Filings; penalty for late filings. — (a) All reports, statements or other documents required by this Article to be filed with the Board shall be filed either by manual delivery to or by certified or registered mail addressed to the Board. Timely filing shall be complete if postmarked on the day the

reports, statements or other documents are to be delivered to the Board. If a report, statement or other document is not filed within the time required by this Article, then the individual, person, media, candidate, political committee, referendum committee or treasurer responsible for filing shall pay to the State Board of Elections a late penalty of twenty dollars ($20.00) per day for each day the filing is late not to exceed five days. The Board shall immediately notify, or cause to be notified, late filers, from which reports are apparently due, by registered or certified mail, return receipt requested, of the penalties under this section. If the penalty has not been paid to or the report has not been filed with the Board within five days after receipt of the notification, then the Board shall report the late filing or failure to file to the appropriate district attorney who shall indict and prosecute the offender as required in G.S. 163-278.27. No criminal penalty shall be imposed if the penalty required by this section is paid and the delinquent report is filed within five days after notification by the Board. (1979, c. 1073, s. 19.)

Editor's Note. —

The 1979 amendment inserted "referendum committee" near the middle of the third sentence of subsection (a).

Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

As subsection (b) was not changed by the amendment, it is not set out.

§ 163-278.36. Elected officials to report funds. — All contributions to, and all expenditures from any "booster fund," "support fund," "unofficial office account" or any other similar source which are made to, in behalf of, or used in support of any person holding an elective office for any political purpose whatsoever during his term of office shall be deemed contributions and expenditures as defined in this Article and shall be reported as contributions and expenditures as required by this Article. The annual report shall show the balance of each separate fund or account maintained on behalf of the elected office holder. (1977, c. 615.)

Editor's Note. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

Quoted in State v. Charlotte Liberty Mut. Ins. Co., 39 N.C. App. 557, 251 S.E.2d 867 (1979).

§ 163-278.37. County boards of elections to preserve reports. — The county boards of elections shall preserve all reports and statements filed with them pursuant to this Article for such period of time as directed by the State Board of Elections. (1979, c. 500, s. 15.)

§ 163-278.38. Effect of failure to comply. — The failure to comply with the provisions of this Article shall not invalidate the results of any referendum. (1979, c. 1073, s. 11.)

Editor's Note. — Session Laws 1979, c. 1073, s. 21, provides: "This act is effective with respect to any referendum held on or after September 1, 1979."

§§ 163-278.39, 163-278.40: Reserved for future codification purposes.

ARTICLE 22B.

Appropriations from the North Carolina Election Campaign Fund.

§ 163-278.41. Appropriations in general election years and other years. — (a) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which a presidential election is held, the State chairman of that political party may apply to the State Treasurer for the disbursement of all funds deposited on behalf of such party in the North Carolina Election Campaign Fund. Upon receipt of such application, the State Treasurer shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by him on behalf of said chairman's political party, but provided that all such payments shall cease 30 days after the State Board of Elections has certified all of the results of the general election to the Secretary of State. Additionally and upon receipt of such application, the State Treasurer shall pay over to the said chairman all funds currently held by the State Treasurer in the "Presidential Election Year Candidates Fund" of that party, which funds shall be allocated and disbursed during the presidential election year among the candidates qualified therefor by the same procedure as the funds received from the North Carolina Campaign Election Fund are allocated among the candidates qualified therefor. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by him until eligible for distribution pursuant to this section.

(b) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which there is not a presidential election, the State chairman of the political party may apply to the State Treasurer for the disbursement of all funds deposited on behalf of such party in the North Carolina Election Campaign Fund. Upon receipt of such application, the State Treasurer shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by him on behalf of said chairman's political party provided that all such payments to the said chairman shall cease 30 days after the State Board of Elections has certified all of the results of the general election to the Secretary of State. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by him until eligible for distribution pursuant to this section.

(c) In each year in which no general election is held, each State chairman of a political party on behalf of which funds have been deposited in the North Carolina Election Campaign Fund may, on or between August 1 and September 1 thereof, apply to the State Treasurer for payment of an amount not to exceed fifty percent (50%) of the then available funds credited to the account of his party. Upon receipt of such application, the State Treasurer shall pay over to said State chairman an amount not to exceed fifty percent (50%) of the then available funds credited to the account of his party. Additionally and upon receipt of such application, the State Treasurer shall place fifty percent (50%) of the said available funds in a separate interest bearing account to be known as the "Presidential Election Year Candidates Fund of the (name of the party) Party" to be disbursed in accord with the provisions of subsection (a) above. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by him until eligible for distribution pursuant to this section. Any interest earned on the funds deposited by the State Treasurer in such Presidential Election Year Campaign Fund shall be credited thereto. (1977, 2nd Sess., c. 1298, s. 2.)

Editor's Note. — The original Article 22B, comprising §§ 163-278.41 through 163-278.43 and covering the same subject matter as the present Article, was enacted by Session Laws

1975, c. 775, s. 2, effective for taxable years beginning on or after January 1, 1975, and expired by its own terms on December 31, 1977. See Session Laws 1975, c. 775, s. 3. The present Article 22B, comprising §§ 163-278.41 through 163-278.45, was enacted by Session Laws 1977, 2nd Sess., c. 1298, s. 2, effective with respect to taxable years beginning on or after January 1, 1978. Session Laws 1977, 2nd Sess., c. 1298, s. 3, provides that the act shall expire on December 31, 1981.

§ 163-278.42. Distribution of campaign funds; legitimate expenses permitted. — (a) In a general election year in which a presidential election is held, every State chairman of a political party shall disburse fifty percent (50%) of all funds received from the North Carolina Campaign Election Fund to that political party. The remaining fifty percent (50%) of such funds shall be allocated to individual candidates for Governor, Lieutenant Governor, United States Senator, United States House of Representatives, Council of State, North Carolina Supreme Court and North Carolina Court of Appeals who have opposition in the general election. In the event a candidate does not decline such funds as are allocated to him, the State Chairman shall forthwith disburse such funds to such candidate.

(b) In a general election year in which there is not a presidential election, every State chairman of a political party shall disburse fifty percent (50%) of all funds received from the North Carolina Campaign Election Fund to that political party. The remaining fifty percent (50%) of such funds shall be allocated to individual candidates for Governor, Lieutenant Governor, United States Senator, United States House of Representatives, Council of State, North Carolina Supreme Court and North Carolina Court of Appeals who have opposition in the general election. In the event a candidate does not decline such funds as are allocated to him, the State Chairman shall forthwith disburse such funds to such candidate.

(c) In each year in which no general election is held, every State chairman of a political party shall disburse all funds received from the North Carolina Campaign Election Fund to that political party.

(d) The allocation of all funds to be allocated and disbursed to the individual candidates who are qualified to receive such funds shall be made by a committee composed of the State chairman of the political party, the State Treasurer of the political party who shall serve as an ex officio member, and the members of that political party who occupy the following offices: Governor, Lieutenant Governor, United States Senate, United States House of Representatives, and Council of State, provided however, that in the event the incumbent is not the nominee of the party for that office in that particular general election then the nominee and not the incumbent, shall serve on this committee. The State chairman shall serve as chairman of this committee. The allocation of funds among the several eligible candidates shall be determined solely in the discretion of the committee and such shall be disbursed by the State chairman of that political party only to the treasurer of a candidate or political committee. In the event that any candidate declines in whole or in part any funds allocated to him or disbursed to him or fails to expend the same within 30 days following the general election, such funds shall revert to or be paid over to the political party of such candidate.

(e) Funds distributed from the North Carolina Campaign Election Fund or from the "Presidential Election Year Candidates Fund" of a political party shall only be expended for legitimate campaign expenses. By way of illustration but not by way of limitation, the following are examples of legitimate campaign expenses:

(1) Radio, television, newspaper, and billboard advertising for and on behalf of a political party or candidate;
(2) Leaflets, fliers, buttons, and stickers;
(3) Campaign staff salaries, provided each staff member is listed by name and by the amount paid as salary and the amount paid as campaign expense reimbursement;

(4) Travel expenses, lodging and food for candidate and staff;

(5) Party headquarters operations related to upcoming general elections, including the purchase, maintenance and programming of computers to provide lists of voters, party workers, officers, committee members and participants in party functions, patterns of voting and other data for use in general election campaigns and party activities and functions prior thereto, the establishment and updating computer file systems of voter registration lists, State, district, county and precinct officers and committee member lists, party clubs or organization lists, the organizing of voter registration, fund raising and get-out-the-vote programs at the county level when conducted by State party personnel, and the preparation of reports required to be filed by State and federal laws and systems needed to prepare the same and keep records incident thereto.

(f) All moneys and funds previously designated by taxpayers being held by the North Carolina Secretary of Revenue and being held by the North Carolina State Treasurer which moneys and funds have not been disbursed or delivered to a political party as of June 16, 1978, when disbursed shall be allocated by the State Chairman of the political party as follows: sixty-two and one-half percent (62½%) of such funds to the political party for legitimate general election campaign expenditures; thirty-seven and one-half percent (37½%) to the eligible candidates as determined by the committee established under this Article.

(g) It shall be unlawful for any person, candidate, political committee or political party to use either directly or indirectly any part of funds distributed from the North Carolina Campaign Election Fund or the Presidential Election Year Candidates Fund of any political party for the support or assistance either directly or indirectly of any candidate in a primary election, for support or assistance relating to the selection of a candidate at a political convention or by the executive committee of a party, for the payment or repayment of any debt or obligation of whatsoever kind or nature incurred by any person, candidate or political committee in a primary election, the selection of a candidate at a political convention or by the executive committee of a party, or for the support, promotion or opposition of a national, State or local referendum, bond election or constitutional amendment. (1977, 2nd Sess., c. 1298, s. 2.)

§ 163-278.43. Annual report to State Board of Elections; suspension of disbursements; willful violations a misdemeanor; audits; adoption of rules. — (a) The State chairman of each political party and the treasurer of each candidate or political committee receiving funds from the North Carolina Campaign Election Fund or the Presidential Election Year Candidates Fund or both shall maintain a full and complete record of their receipts and any and all subsequent expenditures and disbursements thereof, and such shall be substantiated by any records, receipts, and information that the Executive Director of the State Board of Elections shall require. Such record shall be centrally located and shall be readily available at reasonable hours for public inspection. Treasurers of political committees and candidates shall maintain all such funds received from the North Carolina Campaign Election Fund or a Presidential Election Year Candidates Fund or both in a separate account, and shall not allow the same to be commingled with the funds from any other source.

(b) By December 31 of each year, the State chairman of each political party receiving funds from the North Carolina Campaign Election Fund or a Presidential Election Year Candidates Fund and the treasurer of all other political committees or candidates receiving any such funds in the 12 preceding months shall file with the State Board of Elections an itemized statement reporting all receipts, expenditures and disbursements from the date of the last report and attached to such report shall be the verification of such chairman or

treasurer that all such funds received were expended in accordance with the provisions of this Article. If the Executive Secretary of the State Board of Elections determines and finds as a fact that any such funds were not disbursed or expended in accordance with this Article, he shall order such political party, political committee or candidate to reimburse the amount improperly expended or disbursed to the General Fund of the State and such political party, political committee or candidate shall not receive further disbursements from the North Carolina Campaign Election Fund or a Presidential Election Year Candidates Fund until such reimbursement has been accomplished in full. A copy of any such order shall be forwarded to the State Treasurer, which shall constitute notice to him to suspend further disbursements from the campaign fund.

(c) On or before the 15th of January of each calendar year or as soon thereafter as practical the Legislative Services Commission shall appoint an independent auditor or auditors and such auditor or auditors shall immediately conduct an audit of the financial records of the receipts, expenditures and disbursements through each political party to the treasurer of each candidate or political committee receiving any of the above-mentioned funds during the previous calendar year; a copy of such audit shall be forwarded promptly to the Executive Secretary of the State Board of Elections and to the Legislative Services Commission; any discrepancies as shown by the audit shall be acted upon by the Executive Secretary of the State Board of Elections in the manner set forth in subsection (b) above.

(d) The cost of the audit of each political party, candidate, or political committee shall be paid from the funds held by the State Treasurer for disbursement to that party, candidate or committee. The Legislative Services Commission shall determine and notify the State Treasurer of a fixed fee or maximum fee to be allowed for each such audit, and the State Treasurer shall withhold from the funds to be disbursed to each party, candidate or committee a sum necessary to pay the cost of the audit of that party, candidate or committee. If the amount withheld exceeds the actual cost of the audit, the Treasurer shall, after paying the costs of the audit, remit the balance to the party, candidate or committee from which it was withheld. If the designated cost of an audit exceeds the funds held by the Treasurer for disbursement to the party, candidate or committee to be audited, the chairman of the party, or the treasurer of the candidate or committee may decline to accept the funds, in which event the funds shall be transferred to the General Fund of the State, and no audit shall be required of those funds under this section. The Legislative Services Commission shall adopt and promulgate rules to implement the provisions of subsections (c) and (d) of this section. The Legislative Services Commission shall ensure that the auditing procedures shall be uniform and standardized. (1977, 2nd Sess., c. 1298, s. 2; 1979, c. 926, s. 1.)

Editor's Note. — The 1979 amendment added subsections (c) and (d).

Session Laws 1979, c. 926, s. 2, provides: "This act shall be effective to provide an audit of such funds beginning with the calendar year 1979."

§ 163-278.44. Crime; punishment. — Any individual person, candidate, political committee, or treasurer who willfully and intentionally violates any of the provisions of this Article, shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars ($1,000) if an individual, and not more than five thousand dollars ($5,000) if a person other than an individual, or imprisoned for not more than one year, or be both fined and imprisoned. (1977, 2nd Sess., c. 1298, s. 2.)

§ 163-278.45. Definitions. — The terms "candidate," "expend," "individual," "person," "political committee," and "treasurer" as used in this Article shall be as defined in G.S. 163-278.6. (1977, 2nd Sess., c. 1298, s. 2.)

SUBCHAPTER IX. MUNICIPAL ELECTIONS.

ARTICLE 23.

Municipal Election Procedure.

§ 163-280. Municipal boards of elections.

(c) On the Monday following the seventh Saturday before each regular municipal primary or election, the municipal board of elections shall meet and appoint precinct registrars and judges of elections. The municipal board of elections may then or at any time thereafter appoint a supervisor of elections, who shall have all of the powers and duties of a supervisor of elections to a county board of elections. The board may hold other meetings at such times and places as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of business.

(1977, c. 626, s. 1.)

Editor's Note. — The 1977 amendment substituted "a supervisor of elections" for "an executive secretary" in two places in the second sentence of subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 163-281. Municipal precinct election officials.

(h) The municipal board of elections may designate the precinct in which each registrar, judge, assistant, ballot counter, or observer or other officers of elections shall serve; and, after notice and hearing, may remove any registrar, judge, assistant, ballot counter, observer, supervisor of elections or other officers of elections appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause.

(i) Except as otherwise provided in this Chapter, precinct assistants, ballot counters, observers, and supervisors of elections and other officers of elections appointed by the municipal board of elections shall have the same powers and duties with respect to municipal elections as precinct assistants, ballot counters, observers, and supervisors of elections and other officers of elections appointed by county boards of elections. (1971, c. 835, s. 1; 1973, c. 793, ss. 80-83, 94; c. 1223, s. 9; 1977, c. 626, s. 1.)

Editor's Note. — The 1977 amendment substituted "supervisor of elections" for "executive secretary" in subsections (h) and (i) and "supervisors of elections" for "executive secretaries" in subsection (i).

As the rest of the section was not changed by the amendment, only subsections (h) and (i) are set out.

§ 163-288.1. Activating voters for newly annexed or incorporated areas. — (a) Whenever any new city or special district is incorporated or whenever an existing city or district annexes any territory, the city or special district shall cause a map of the corporate or district limits to be prepared from the boundary

descriptions in the act, charter or other document creating the city or district or authorizing or implementing the annexation. The map shall be delivered to the county or municipal board of elections conducting the elections for the city or special district. The board of elections shall then activate for city or district elections each voter eligible to vote in the city or district who is registered to vote in the county to the extent that residence addresses shown on the county registration certificates can be identified as within the limits of the city or special district. Each voter whose registration is thus activated for city or special district elections shall be so notified by mail. The cost of preparing the map of the newly incorporated city or special district or of the newly annexed area, and of activating voters eligible to vote therein, shall be paid by the city or special district. In lieu of the procedures set forth in this section, the county board of elections may use either of the methods of registration of voters set out in G.S. 163-288.2 when activating voters pursuant to the incorporation of a new city or election of city officials or both under authority of an act of the General Assembly or when activating voters after an annexation of new territory by a city or special district under Chapter 160A, Article 4A, or other general or local law.

(b) Each voter whose registration is changed by the county or municipal board of elections in any manner pursuant to any annexation or expunction under this subsection shall be so notified by mail.

(c) The State Board of Elections shall have authority to adopt regulations for the more detailed administration of this section. (1971, c. 835, s. 1; 1973, c. 793, s. 88; 1977, c. 752, s. 1.)

Editor's Note. — The 1977 amendment added the language beginning "or when activating voters after an annexation of new territory" to the end of subsection (a).

§ 163-288.2. Registration in area proposed for incorporation or annexed. — (a) Whenever the General Assembly incorporates a new city and provides in the act of incorporation for a referendum on the question of incorporation or for a special election for town officials or for both, or whenever an existing city or special district annexes new territory under the provisions of Chapter 160A, Article 4A, or other general or local law, the board of elections of the county in which the proposed city is located or in which the newly annexed territory is located shall determine those individuals eligible to vote in the referendum or special election or in the city or special district elections. In determining the eligible voters the board may, in its discretion, use either of the following methods:

METHOD A. — The board of elections shall prepare a list of those registered voters residing within the proposed city or newly annexed territory. The board shall make this list available for public inspection in its office for a two-week period ending 21 days (excluding Saturdays and Sundays) before the day of the referendum or special election, or the next scheduled city or special district election. During this period, any voter resident within the proposed city or newly annexed territory and not included on the list may cause his name to be added to the list. At least one week and no more than two weeks before the day the period of public inspection is to begin, the board shall cause notice of the list's availability to be posted in at least two prominent places within the proposed city or newly annexed territory and may cause the notice to be published in a newspaper of general circulation within the county. The notice shall state that the list has been prepared, that only those persons listed may vote in the referendum or special election, that the list will be available for public inspection in the board's office, that any qualified voter not included on the list may cause his name to be added to the list during the two-week period of public inspection, and that persons in newly annexed territory should present themselves so their

registration records may be activated for voting in city or special district elections in the newly annexed territory.

METHOD B. — The board of elections shall conduct a special registration of eligible persons desiring to vote in the referendum or special election or in the newly annexed territory. The registration records shall be open for a two-week period (except Sundays) ending 21 days (excluding Saturdays and Sundays) before the day of the referendum or special election or the next scheduled city or special district election. On the two Saturdays during that two-week period, the records shall be located at the voting place for the referendum or special election or the next scheduled city or special district election; on the other days it may, in the discretion of the board, be kept at the voting place, at the office of the board, or at the place of business of a person designated by the board to conduct the special registration. At least one week and no more than two weeks before the day the period of special registration is to begin, the board shall cause notice of the registration to be posted in at least two prominent places within the proposed city or newly annexed territory and may cause the notice to be published in a newspaper of general circulation within the county. The notice shall state the purpose and times of the special registration, the location of the registration records, that only those persons registered in the special registration may vote in the referendum or special election, and that persons in newly annexed territory should present themselves so their registration records may be activated for voting in city or special district elections in the newly annexed territory.

(b) Only those persons registered pursuant to this section may vote in the referendum or special election, provided, however, that in cases where voters are activated under either Method A or B to vote in a city or special district that annexes territory, the city or special district shall permit them to vote in the city or special district's election and shall, as well, permit other voters to vote in such elections who did not register under the provisions of this section if they are otherwise registered, qualified and eligible to vote in the same. (1973, c. 551; 1977, c. 752, s. 2.)

Editor's Note. — The 1977 amendment, in the introductory paragraph of subsection (a), inserted the language beginning "or whenever an existing city or special district" and ending "or other general or local law" and "or in which the newly annexed territory is located" in the first sentence and added "or in the city or special district elections" to the end of the first sentence. In the paragraph designated Method A in subsection (a), the amendment added "or newly annexed territory" to the end of the first sentence and "or the next scheduled city or special district election" to the end of the second sentence, inserted "or newly annexed territory" in the third and fourth sentences, deleted "and" preceding "that any qualified voter" in the fifth sentence, and added the language beginning "and that persons in newly annexed territory" to the end of the fifth sentence. In the paragraph designated Method B of subsection (a), the amendment added "or in the newly annexed territory" to the end of the first sentence and "or the next scheduled city or special district election" to the end of the second sentence, inserted "or the next scheduled city or special district election" in the third sentence and "or newly annexed territory" in the fourth sentence, deleted "and" preceding "that only those persons" in the fifth sentence, and added the language beginning "and that persons in newly annexed territory" to the end of the fifth sentence. In subsection (b), the amendment inserted "those" near the beginning of the subsection and added the language beginning "provided, however" to the end of the subsection.

For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

ARTICLE 24.

Conduct of Municipal Elections.

§ 163-294.2. Notice of candidacy and filing fee in nonpartisan municipal elections.

(b) Only persons who are registered to vote in the municipality shall be permitted to file notice of candidacy for election to municipal office. The board of elections shall inspect the voter registration lists immediately after the expiration of the registration period and shall cancel the notice of candidacy of any candidate who is not eligible to vote in the election. The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the county sheriff.

(1977, c. 265, s. 18.)

Editor's Note. —

The 1977 amendment deleted the former second and third sentences of subsection (b), which related to the filing of notice of candidacy by persons not registered to vote in municipal elections.

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 163-296. Nomination by petition. — In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate may do so in the manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least fifteen percent (15%) of the whole number of voters qualified to vote in the municipal election according to the most recent figures certified by the State Board of Elections. A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the regular municipal election ballot as an unaffiliated candidate for the same office in that year. The Board of Elections shall examine and verify the signatures on the petition, and shall certify only the names of signers who are found to be qualified registered voters in the municipality. (1971, c. 835, s. 1; 1979, c. 23, ss. 2, 4, 5; c. 534, ss. 3, 4.)

Editor's Note. — The first 1979 amendment substituted "unaffiliated" for "independent or non-partisan" and "not later than 12:00 noon on the Friday preceding the seventh Saturday" for "not later than 21 days" in the first sentence, and added the second sentence.

The second 1979 amendment, effective with respect to elections held on and after July 1, 1979, substituted "unaffiliated" for "independent" in the first sentence and added the third sentence.

The first sentence of the section is set out above as amended by the first 1979 amendatory act.

§ 163-299. Ballots; municipal primaries and elections. — (a) The ballots printed for use in general and special elections under the provisions of this Article shall contain:

(1) The names of all candidates who have been put in nomination in accordance with the provisions of this Chapter by any political party recognized in this State, or, in nonpartisan municipal elections, the names of all candidates who have filed notices of candidacy or who have been nominated in a nonpartisan primary.

(2) The names of all persons who have qualified as unaffiliated candidates under the provisions of G.S. 163-296.

(3) All questions, issues and propositions to be voted on by the people.

(c) The names of candidates for nomination or election in municipal primaries or elections shall be placed on the ballot in strict alphabetical order, unless the municipal governing body has adopted a resolution no later than 60 days prior to a primary or election requesting that candidates' names be rotated on ballots. In the event such a resolution has been adopted, then the board of elections responsible for printing the ballots shall have them printed so that the name of each candidate shall, as far as practicable, occupy alternate positions on the ballot; to that end the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position and every other position, if any, upon an equal number of ballots, and the ballots shall be distributed among the precinct voting places impartially and without discrimination.

(1979, c. 534, s. 4; c. 806.)

Editor's Note. — The first 1979 amendment substituted "unaffiliated" for "independent" in subdivision (2) of subsection (a).

The second 1979 amendment added "unless the municipal governing body has adopted a resolution no later than 60 days prior to a primary or election requesting that candidates' names be rotated on ballots" at the end of the first sentence of subsection (c), and added the second sentence to subsection (c).

Session Laws 1979, c. 534, s. 5, provides: "This act is effective with respect to elections held on or after July 1, 1979."

As the rest of the section was not changed by the amendments, only subsections (a) and (c) are set out.

§ 163-302. Absentee voting. — (a) In any municipal election, including a primary or general election or referendum, conducted by the county board of elections, absentee voting may, upon resolution of the municipal governing body, be permitted. Such resolution must be adopted no later than 60 days prior to an election in order to be effective for that election. Any such resolution shall remain effective for all future elections unless repealed no later than 60 days before an election. A copy of all resolutions adopted under this section shall be filed with the State Board of Elections and the county board of elections conducting the election within 10 days of passage in order to be effective. Absentee voting shall not be permitted in any municipal election unless such election is conducted by the county board of elections.

(b) The provisions of Articles 20 and 21 of this Chapter shall apply to absentee voting in municipal elections, except the earliest date by which absentee ballots shall be required to be available for absentee voting in municipal elections shall be 30 days prior to the date of the municipal primary or election or as quickly following the filing deadline specified in G.S. 163-291(2) or G.S. 163-294.2(c) as the county board of elections is able to secure the official ballots. (1971, c. 835, s. 1; 1975, c. 370, s. 1; c. 836; 1977, c. 475, s. 1.)

Editor's Note. —

The 1977 amendment substituted "60 days" for "50 days" in the second and third sentences of subsection (a), added "in order to be effective" to the end of the fourth sentence of subsection (a), rewrote the fifth sentence of subsection (a), and rewrote subsection (b).

Session Laws 1977, c. 475, s. 2, provides: "Nothing herein shall render void any resolution on file with the State Board of Elections as of the effective date of this act."

§ 163-303: Repealed by Session Laws 1977, c. 265, s. 19.

Chapter 164.

Concerning the General Statutes of North Carolina.

ARTICLE 2.

The General Statutes Commission.

§ 164-14. Membership; appointments; terms; vacancies. — (a) The Commission shall consist of 12 members, who shall be appointed as follows:

(1) One member, by the president of the North Carolina State Bar;

(2) One member, by the General Statutes Commission;

(3) One member, by the dean of the school of law of the University of North Carolina;

(4) One member, by the dean of the school of law of Duke University;

(5) One member, by the dean of the school of law of Wake Forest University;

(6) One member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House;

(7) One member, by the President of the Senate of each General Assembly from the membership of the Senate;

(8) Two members, by the Governor;

(9) One member, by the dean of the school of law of North Carolina Central University;

(10) One member by the president of the North Carolina Bar Association;

(11) One member, by the dean of the school of law of Campbell College.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the General Statutes Commission, and the deans of the schools of law of North Carolina Central University, Duke University, the University of North Carolina, and Wake Forest University shall be made in the even-numbered years, and appointments made by the Speaker of the House of Representatives, the President of the Senate, president of the North Carolina Bar Association, the Dean of the School of Law of Campbell College and the Governor shall be made in the odd-numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May 31 two years thereafter. All such appointments shall be made not later than May 31 of the year when such appointments are to become effective.

(1977, c. 709, ss. 1, 2.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "12 members" for "11 members" in the introductory language of subsection (a), added subdivision (11) of subsection (a), and inserted "the Dean of the School of Law of Campbell College" near the middle of the first sentence of subsection (c).

As the rest of the section was not changed by the amendment, only subsections (a) and (c) are set out.

§§ 164-20 to 164-24: Reserved for future codification purposes.

ARTICLE 3.

Commission Code Recodification.

§ 164-25. Creation of Commission. — There is hereby created a Commission on Code Recodification (hereafter referred to as "the Commission") which shall be a temporary Commission within the Department of Justice with the powers and duties set forth herein. (1979, c. 1075, s. 1.)

Editor's Note. — Session Laws 1979, c. 1075, s. 12, makes this Article effective July 1, 1979.

§ 164-26. Members of the Commission. — The Commission shall be composed of:

(1) The Attorney General or his designate, ex officio, who shall serve as Chairman of the Commission and shall be a voting member of the Commission;

(2) Two trial court judges, ex officio, one of whom shall be a superior court judge and one a district court judge, appointed by the Governor, who shall be voting members;

(3) One judge or justice of the appellate division, ex officio, appointed by the Chief Justice, who shall be a voting member;

(4) Two members of the Senate appointed by the Lieutenant Governor for a term coincident with their terms as members of the Senate, and two members of the House of Representatives appointed by the Speaker of the House for a term coinciding with their terms as members of the House of Representatives; and

(5) Two members who shall be active practicing attorneys, appointed by the President of the North Carolina State Bar. Members of the Commission shall serve until the expiration of the Commission or until their successors qualify. The Commission may, by majority vote, remove any member of the Commission for chronic absenteeism, misfeasance, malfeasance or other good cause. Vacancies shall be filled for the unexpired term by the persons authorized to make the original appointments. (1979, c. 1075, s. 2.)

§ 164-27. Compensation and expenses. — The members of the Commission shall receive no compensation for attendance at meetings, except a per diem expense reimbursement. Legislative members of the Commission shall be reimbursed for subsistence and travel expenses at the rates set out in G.S. 120-3.1 from funds made available to the Commission. Members of the Commission who are not officers or employees of the State shall receive reimbursement for subsistence and travel expenses at rates set out in G.S. 138-5 from funds made available to the Commission. Members of the Commission who are officers or employees of the State shall be reimbursed for travel and subsistence at the rates set out in G.S. 138-6 from funds made available to the Commission. (1979, c. 1075, s. 3.)

§ 164-28. Assuming duties. — Within 30 days after the passage of this Article, the Commission shall meet and begin duties assigned to the Commission. (1979, c. 1075, s. 4.)

§ 164-29. Authority to enter into contracts. — The Attorney General, pursuant to authority vested in him by Article 2 of Chapter 114 of the General Statutes, the authority vested in him by G.S. 164-9 and 164-10, and this Article is authorized and empowered to enter into and execute on behalf of the State of North Carolina contracts for the recodification, revision, republication and indexing of the statutory law of general applicability of the State of North Carolina. It is the intent of the General Assembly to give to the Attorney General wide latitude in negotiating the contract in order to take advantage of modern innovations in statute codification, updating and indexing. The Attorney General shall exercise his best efforts to obtain the best possible code for the State of North Carolina. (1979, c. 1075, s. 5.)

§ 164-30. Duties of Commission. — The Commission shall coordinate the recodification using the facilities and research capacities of the Division of Legislative Drafting of the General Assembly, the Division of Legislative Drafting and Codification of Statutes of the Department of Justice and the publisher. The Commission shall have supervision and control over the recodification after a contract is entered into and shall have authority to accept or reject as satisfactory the drafts and manuscripts of the recodification. The recodification shall not be recognized as the statutory law of this State unless and until approved and enacted by the General Assembly of North Carolina. (1979, c. 1075, s. 6.)

§ 164-31. Contents of recodification. — The recodification shall contain the full text of all operative and effective sections of the revision of the laws of North Carolina enacted by Chapter 33 of the 1943 Session Laws, said revision being known as the General Statutes of North Carolina, as modified by all operative and effective amendments thereto, and all operative and effective session laws of a general and permanent nature enacted since the publication of the General Statutes of North Carolina down through the end of the 1979 Regular Session (2nd Session 1980) of the General Assembly.

Every act or part of an act of a permanent nature which affects 10 or more counties shall be deemed to be "general" for purposes of this section, but the Commission, in its discretion, may cause an act or part of an act affecting fewer counties to be codified and published.

The recodification shall contain such indices, tables, and ancillaries as the Commission shall deem to be desirable and practicable to include. (1979, c. 1075, s. 7.)

§ 164-32. Copyright to statutes. — Copyright to the statutes as so recodified shall be taken by the publisher in the name of the State of North Carolina and be owned by it. The Attorney General shall have the authority to grant licenses under the copyright. (1979, c. 1075, s. 8.)

§ 164-33. Report of Commission to General Assembly. — The Commission is authorized and directed to report and recommend to the General Assembly such legislation as it finds in making up the recodification as may be necessary or advisable to:

(1) Eliminate, modify or repeal obsolete laws;
(2) Clarify ambiguous laws; or
(3) Resolve conflicts in or between laws.

The report and recommendations of the Commission concerning these matters shall be prepared, printed and bound and presented to the 1981 Session of the General Assembly with the legislative edition of the recodification required to be submitted as hereafter provided. (1979, c. 1075, s. 9.)

§ 164-34. Printing of recodified statutes; distribution of new code; termination of Commission. — As soon as the work of recodification is completed, the Commission shall cause to be printed and published no fewer than 600 copies of such recodification as a legislative edition, to be used for examination, consideration and action by the members of the General Assembly of 1981. Such legislative edition shall set forth all the general public laws of North Carolina, together with any supplemental or implementing legislation recommended by the division as essential to make a complete and clear statement of said laws, in such form and with such arrangement, numbering system, tables of contents, indices and editorial aids as said division shall determine.

As soon as the report of the Commission and legislative edition have been printed, one copy thereof shall be placed in the hands of each of the Justices of the Supreme Court, each judge of the Court of Appeals, each judge of the superior court, the Governor, the head of each principal department of the State government, the members of the General Statutes Commission, and, immediately upon their election, or as soon thereafter as possible, the members of the General Assembly of the Regular Session of 1981.

The Commission shall go out of existence upon the submission of its report and the legislative edition as herein provided. (1979, c. 1075, s. 10.)

Chapter 165.

Veterans.

ARTICLE 1.

Department of Administration.

§ 165-1. North Carolina Veterans Commission renamed. — The North Carolina Veterans Commission is hereby renamed the Department of Administration. The Department shall assume all duties, responsibilities and powers formerly exercised by the Veterans Commission, and shall further exercise those powers and duties prescribed in this Article and elsewhere in the General Statutes. (1967, c. 1060, s. 1; 1973, c. 620, s. 9; 1977, c. 70, s. 27.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Department of Administration" for "Department of Military and Veterans Affairs" in the first sentence. Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 165-2. References changed. — Wherever in the General Statutes the words "North Carolina Veterans Commission" appear, the same shall be stricken out and the words "North Carolina Department of Administration" inserted in lieu thereof. (1967, c. 1060, s. 1; 1977, c. 70, s. 27.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Department of Administration" for "Department of Veterans Affairs." Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 165-3. Definitions. — Wherever used in this Article, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

(2) "Department" means the North Carolina Department of Administration, an agency of the government of the State of North Carolina.

(4) "Veteran" means

a. For qualifying as a voting member of the State Board of Veterans Affairs and as the State Director of Veterans Affairs, a person who served honorably during a period of war as defined in Title 38, United States Code.

b. For entitlement to the services of the Department of Administration, any person who may be entitled to any benefits or rights under the laws of the United States by reason of service in the armed forces of the United States.

(1977, c. 70, s. 27.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Department of Administration" for "Department of Veterans Affairs" in subdivision (2) and in paragraph b of subdivision (4).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (2) and (4) are set out.

§ 165-8. Quarters. — The Department of Administration shall provide, in the City of Raleigh, adequate quarters for the central office of the Department of Administration. The Department of Administration shall procure suitable space for its field offices and other activities pursuant to applicable provisions of law and in accordance with rules adopted by the Governor with the approval of the Council of State. (1945, c. 723, s. 1; 1967, c. 1060, s. 1; 1973, c. 620, s. 9; 1977, c. 70, s. 27.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Department of Administration" for "Department of Military and Veterans Affairs" in the first and second sentences.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 165-11. Copies of records to be furnished to the Department of Administration. — (a) Whenever copies of any State and local public records are requested by a representative of the Department of Administration in assisting persons in obtaining any federal, State, local or privately provided benefits relating to veterans and their beneficiaries, the official charged with the custody of any such records shall without charge furnish said representative with the requested number of certified copies of such records; provided, that this section shall not apply to the disclosure of information in certain privileged and confidential records referred to elsewhere in the General Statutes of North Carolina, which information shall continue to be disclosed in the manner prescribed by the statute relating thereto.

(1977, c. 70, s. 27.)

Editor's Note. — The 1977 amendment, effective April 1, 1977, substituted "Department of Administration" for "Department of Military and Veterans Affairs" in subsection (a).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

As subsection (b) was not changed by the amendment, it is not set out.

§ 165-11.1. Confidentiality of Veterans Affairs records. — Notwithstanding any other provisions of Chapter 143B, no records of the Division of Veterans Affairs in the Department of Administration shall be disclosed or used for any purpose except for official purposes, and no records shall be disclosed, destroyed or used in any manner which is in violation of any existing federal law or regulation. Nothing in this Chapter shall convert records which are the property of the federal government into State property. (1977, c. 70, s. 28.)

Editor's Note. — Session Laws 1977, c. 70, s. 37, makes this section effective April 1, 1977. Session Laws 1977, c. 70, s. 34, contains a severability clause.

ARTICLE 3.

Minor Spouses of Veterans.

§ 165-18. Rights conferred.

Editor's Note. — For article, "The Contracts of Minors Viewed from the Perspective of Fair Exchange," see 50 N.C.L. Rev. 517 (1972).

ARTICLE 4.

Scholarships for Children of War Veterans.

§ 165-20. Definitions. — As used in this Article the terms defined in this section shall have the following meaning:

(3) "Child" means a person who has completed high school or its equivalent prior to receipt of a scholarship as may be awarded under this Article and who further meets one of the following requirements:

a. A person whose veteran parent was a legal resident of North Carolina at the time of said veteran's entrance into that period of service in the armed forces during which eligibility is established under G.S. 165-22.

b. A veteran's child who was born in North Carolina and has lived in North Carolina continuously since birth. Provided, that the requirement in the preceding sentence as to birth in North Carolina may be waived by the Department of Administration if it is shown to the satisfaction of the Department that the child's mother was a native-born resident of North Carolina and was such resident at the time of her marriage to the veteran and was outside the State temporarily at the time of the child's birth, following which the child was returned to North Carolina within a reasonable period of time where said child has since lived continuously.

c. A person meeting either of the requirements set forth in subdivision (3)a or b above, and who was legally adopted by the veteran prior to said person's reaching the age of six years.

(1977, c. 70, s. 27.)

Editor's Note. —

The 1977 amendment, effective April 1, 1977, substituted "Department of Administration" for "Department of Military and Veterans Affairs" in paragraph b of subdivision (3).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (3) are set out.

§ 165-22. Classes or categories of eligibility under which scholarships may be awarded. — A child, as defined in this Article, who falls within the provisions of any eligibility class described below shall, upon proper application be considered for a scholarship, subject to the provisions and limitations set forth for the class under which he is considered:

(2) Class I-B: Under this class a limited scholarship providing only those benefits set forth in G.S. 165-21(1)a and d and 165-21(2) of this Article,

shall be awarded to any child whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of, is or was at the time of his death receiving compensation for a wartime service-connected disability of one hundred percent (100%) as rated by the United States Veterans Administration. Provided, that if the veteran parent of a recipient under this class should die of his wartime service-connected condition before the recipient shall have utilized all of his scholarship eligibility time, then the North Carolina Department of Administration shall amend the recipient's award from Class I-B to Class I-A for the remainder of the recipient's eligibility time. The effective date of such an amended award shall be determined by the Department of Administration, but, in no event shall it predate the date of the veteran parent's death.

(1977, c. 70, s. 27.)

Editor's Note. —

The 1977 amendment, effective April 1, 1977, in subdivision (2), substituted "Department of Administration" for "Department of Veterans Affairs" in the second sentence and for "Department of Military and Veterans Affairs" in the third sentence.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (2) are set out.

§ 165-22.1. Administration and funding. — (a) The administration of the scholarship program shall be vested in the Department of Administration, and the disbursing and accounting activities required shall be a responsibility of the Department of Administration. The Veterans Affairs Commission shall determine the eligibility of applicants, select the scholarship recipients, establish the effective date of scholarships, and may suspend or revoke scholarships if the said Veterans Affairs Commission finds that the recipient does not maintain an adequate academic status, or if the recipient engages in riots, unlawful demonstrations, the seizure of educational buildings, or otherwise engages in disorderly conduct, breaches of the peace or unlawful assemblies. The Department of Administration shall maintain the primary and necessary records, and the Veterans Affairs Commission shall promulgate such rules and regulations not inconsistent with the other provisions of this Article as it deems necessary for the orderly administration of the program. It may require of State or private educational institutions, as defined in this Article, such reports and other information as it may need to carry out the provisions of this Article. The Department of Administration shall disburse scholarship payments for recipients certified eligible by the Department of Administration upon certification of enrollment by the enrolling institution.

(1977, c. 70, s. 27.)

Editor's Note. —

The 1977 amendment, effective April 1, 1977, substituted "Department of Administration" for "Department of Military and Veterans Affairs" in the first, third, and fifth sentences of subsection (a).

Session Laws 1977, c. 70, s. 34, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Chapter 166.

Civil Preparedness Agencies.

§§ 166-1 to 166-12: Repealed by Session Laws 1977, c. 848, s. 1.

Cross References. — For present provisions as to civil preparedness, see Chapter 166A. As to transfer of the State Civil Preparedness Agency to the Department of Crime Control and Public Safety, see § 143B-475.

Chapter 166A.

North Carolina Civil Preparedness Act.

§ 166A-1. Short title. — This Chapter may be cited as "North Carolina Civil Preparedness Act of 1977." (1977, c. 848, s. 2.)

Editor's Note. — This Chapter is Chapter 166 as rewritten by Session Laws 1977, c. 848, and recodified. Where appropriate, the historical citations to the sections in the former Article have been added to corresponding sections in the Article as rewritten and recodified.

§ 166A-2. Purposes. — The purposes of this Chapter are to set forth the authority and responsibility of the Governor, State agencies, and local governments in prevention of, preparation for, response to and recovery from natural or man-made disasters or hostile military or paramilitary action and to:

(1) Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;
(2) Prepare for prompt and efficient rescue, care and treatment of threatened or affected persons;
(3) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and
(4) Provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response and recovery among agencies and officials of this State and with similar agencies and officials of other states, with local and federal governments, with interstate organizations and with other private and quasi-official organizations. (1959, c. 337, s. 1; 1975, c. 734, s. 1; 1977, c. 848, s. 2.)

§ 166A-3. Limitations. — Nothing in this Chapter shall be construed to:

(1) Interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with an emergency, disaster or war; or
(2) Limit, modify or abridge the authority of the Governor to proclaim martial law or exercise any other powers vested in him under the Constitution, statutes, or common law of this State independent of, or in conjunction with, any provisions of this Chapter. (1975, c. 734, s. 2; 1977, c. 848, s. 2.)

§ 166A-4. Definitions. — The following words and phrases as used in this Chapter shall have the following meanings:

(1) "Civil Preparedness." — Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which include the never-ending preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance and recovery.

(2) "Civil Preparedness Agency." — A State or local governmental agency charged with coordination of all civil preparedness activities for its jurisdiction.

(3) "Disaster." — An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military or paramilitary cause.

(4) "Political Subdivision." — Counties and incorporated cities, towns and villages. (1951, c. 1016, s. 2; 1953, c. 1099, s. 1; 1955, c. 387, s. 1; 1975, c. 734, ss. 4-6, 14; 1977, c. 848, s. 2.)

§ 166A-5. State civil preparedness. — The State civil preparedness program includes all aspects of preparations for, response to and recovery from war or peacetime disasters.

(1) Governor. — The Governor shall have general direction and control of the State civil preparedness program and shall be responsible for carrying out the provisions of this Chapter.

a. The Governor is authorized and empowered:

1. To make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him herein, with due consideration of the policies of the federal government.
2. To delegate any authority vested in him under this Chapter and to provide for the subdelegation of any such authority.
3. To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the civil preparedness of the State and nation.
4. To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service and other disaster relief organizations.
5. To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-10.
6. To utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of disaster, disaster, imminent threat of disaster or civil preparedness planning and training purposes.
7. To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal government against any claim arising from the removal.
8. To sell, lend, lease, give, transfer or deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law, and to account to the State Treasurer for any funds received for such property.

b. In the threat of or event of a disaster, or when requested by the governing body of any political subdivision in the State, the Governor may assume operational control over all or any part of the civil preparedness functions within this State.

(2) Secretary of Crime Control and Public Safety. — The Secretary of Crime Control and Public Safety shall be responsible to the Governor for State civil preparedness activities and shall have:

a. The power, as delegated by the Governor, to activate the State and local plans applicable to the areas in question and he shall be empowered to authorize and direct the deployment and use of any personnel and forces to which the plan or plans apply, and the use or distribution of any supplies, equipment, materials and facilities available pursuant to this Chapter or any other provision of law.

b. Additional authority, duties, and responsibilities as may be prescribed by the Governor, and he may subdelegate his authority to the appropriate member of his department.

(3) Functions of State Civil Preparedness. — The functions of the State civil preparedness program include:

a. Coordination of the activities of all agencies for civil preparedness within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of civil preparedness programs.

b. Preparation and maintenance of State plans for man-made or natural disasters. The State plans or any parts thereof may be incorporated into departmental regulations and into executive orders of the Governor.

c. Promulgation of standards and requirements for local plans and programs, determination of eligibility for State financial assistance provided for in G.S. 166A-7 and provision of technical assistance to local governments.

d. Development and presentation of training programs and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.

e. Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for civil preparedness, maintaining data on these resources, and planning for the most efficient use thereof.

f. Coordination of the use of any private facilities, services, and property.

g. Preparation for issuance by the Governor of executive orders, proclamations, and regulations as necessary or appropriate; and

h. Cooperation and maintenance of liaison with the other states, federal government and any public or private agency or entity in achieving any purpose of this Chapter and in implementing programs for emergency, disaster or war prevention, preparation, response, and recovery.

i. Making recommendations, as appropriate, for zoning, building and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of a disaster.

j. Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network. (1951, c. 1016, ss. 3, 9; 1953, c. 1099, s. 3; 1955, c. 387, ss. 2, 3, 5; 1957, c. 950, s. 5; 1975, c. 734, ss. 9, 10, 14, 16; 1977, c. 848, s. 2.)

§ 166A-6. State of disaster. — (a) The existence of a state of disaster may be proclaimed by the Governor, or by a resolution of the General Assembly if either of these finds that a disaster threatens or exists. Any state of disaster shall terminate by a proclamation of the Governor or resolution of the General Assembly. A proclamation or resolution declaring or terminating a state of disaster shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State and the clerks of superior court in the area to which it applies.

(b) In addition to any other powers conferred upon the Governor by law, during the state of disaster, he shall have the following:

(1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services;

(2) To take such action and give such directions to State and local law-enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Chapter and with the orders, rules and regulations made pursuant thereto;

(3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety;

(4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Chapter of such responsibilities for willful failure to obey an order, rule or regulation adopted pursuant to this Chapter.

(c) In addition, during a state of disaster, with the concurrence of the Council of State, the Governor has the following powers:

(1) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(2) To establish a system of economic controls over all resources, materials and services to include food, clothing, shelter, fuel, rents and wages, including the administration and enforcement of any rationing, price freezing or similar federal order or regulation;

(3) To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities;

(4) To waive a provision of any regulation or ordinance of a State agency or a local governmental unit which restricts the immediate relief of human suffering;

(5) To use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and to reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of such disaster so requires and the contingency and emergency funds are insufficient or inappropriate;

(6) To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population;

(7) To appoint or remove an executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission.

a. Such an acting executive head will serve during:

1. The physical or mental incapacity of the regular office holder, as determined by the Governor after such inquiry as the Governor deems appropriate;
2. The continued absence of the regular holder of the office; or
3. A vacancy in the office pending selection of a new executive head.

b. An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise.

c. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately:

1. Upon the termination of the incapacity as determined by the Governor of the officer in whose stead he acts;
2. Upon the return of the officer in whose stead he acts; or
3. Upon the selection and qualification of a person to serve for the unexpired term, or the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and his qualification.

(8) To procure, by purchase, condemnation, seizure or by other means to construct, lease, transport, store, maintain, renovate or distribute materials and facilities for civil preparedness without regard to the limitation of any existing law. (1951, c. 1016, s. 4; 1955, c. 387, s. 4; 1959, c. 284, s. 2; c. 337, s. 4; 1975, c. 734, ss. 11, 14; 1977, c. 848, s. 2.)

§ 166A-7. County and municipal civil preparedness. — (a) The governing body of each county is responsible for civil preparedness, as defined in G.S. 166A-4, within the geographical limits of such county. All civil preparedness efforts within the county will be coordinated by the county, including activities of the municipalities within the county.

(1) The governing body of each county is hereby authorized to establish and maintain a civil preparedness agency for the purposes contained in G.S. 166A-2.

(2) The governing body of each county which establishes a civil preparedness agency pursuant to this authorization will appoint a coordinator who will have direct responsibility for the organization, administration and operation of the county program and will be subject to the direction and guidance of such governing body.

(3) In the event any county fails to establish a civil preparedness agency, and the Governor, in his discretion, determines that a need exists for such a civil preparedness agency, then the Governor is hereby empowered to establish a civil preparedness agency within said county.

(b) All incorporated municipalities are authorized to establish and maintain civil preparedness agencies subject to coordination by the county. Joint agencies composed of a county and one or more municipalities within its borders may be formed.

(c) Each county and incorporated municipality in this State is authorized to make appropriations for the purposes of this Chapter and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues, whose use is not otherwise restricted by law.

(d) In carrying out the provisions of this Chapter each political subdivision is authorized:

(1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for civil preparedness purposes and to provide for the health and safety of persons and property, including emergency assistance, consistent with this Chapter;
(2) To direct and coordinate the development of civil preparedness plans and programs in accordance with the policies and standards set by the State;
(3) To assign and make available all available resources for civil preparedness purposes for service within or outside of the physical limits of the subdivision; and
(4) To delegate powers in a local state of emergency under G.S. 166A-8 to an appropriate official.

(e) Each county which establishes a civil preparedness agency pursuant to State standards and which meets requirements for local plans and programs may be eligible to receive State financial assistance. Such financial assistance for the maintenance and operation of a county civil preparedness program will not exceed one thousand dollars ($1,000) for any fiscal year and is subject to an appropriation being made for this purpose. Eligibility of each county will be determined annually by the State. (1951, c. 1016, s. 6; 1953, c. 1099, s. 4; 1957, c. 950, s. 2; 1959, c. 337, s. 5; 1973, c. 620, s. 9; 1975, c. 734, ss. 12, 14, 16; 1977, c. 848, s. 2.)

§ 166A-8. Local emergency authorizations. — Procedures governing the declaration of a local state of emergency:

(1) A local state of emergency may be declared for any disaster, as defined in G.S. 166A-4 under the provisions of Article 36A of G.S. Chapter 14.
(2) Such a declaration shall activate the local ordinances authorized in G.S. 14-288.12 through 14-288.14 and any and all applicable local plans, mutual assistance compacts and agreements and shall also authorize the furnishing of assistance thereunder.
(3) The timing, publication, amendment and recision of local "state of emergency" declarations shall be in accordance with the local ordinance. (1951, c. 1016, s. 6; 1953, c. 1099, s. 4; 1957, c. 950, s. 2; 1959, c. 337, s. 5; 1973, c. 620, s. 9; 1975, c. 734, ss. 12, 14, 16; 1977, c. 848, s. 2.)

§ 166A-9. Accept services, gifts, grants and loans. — Whenever the federal government or any agency or officer thereof or any person, firm or corporation shall offer to the State, or through the State to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan, for the purposes of civil preparedness, the State acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its governing body, may accept such offer. Upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials or funds on behalf of the State or of such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer. (1951, c. 1016, s. 8; 1973, c. 803, s. 45; 1975, c. 19, s. 72; c. 734, ss. 13, 14; 1977, c. 848, s. 2.)

§ 166A-10. Establishment of mutual aid agreements. — (a) The Governor may establish mutual aid agreements with other states and with the federal government provided that any special agreements so negotiated are within the Governor's authority.

(b) The chief executive of each political subdivision, with the concurrence of the subdivision's governing body, may develop mutual aid agreements for

reciprocal civil preparedness aid and assistance. Such agreements shall be consistent with the State civil preparedness program and plans.

(c) The chief executive officer of each political subdivision, with the concurrence of the governing body and subject to the approval of the Governor, may enter into mutual aid agreements with local chief executive officers in other states for reciprocal civil preparedness aid and assistance.

(d) Mutual aid agreements may include but are not limited to the furnishing or exchange of such supplies, equipment, facilities, personnel and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel and similar items; and on such terms and conditions as deemed necessary. (1951, c. 1016, s. 7; 1975, c. 734, ss. 14, 16; 1977, c. 848, s. 2.)

§ 166A-11. Compensation. — (a) Compensation for services or for the taking or use of property shall be only to the extent that legal obligations of individual citizens are exceeded in a particular case and then only to the extent that the claimant has not been deemed to have volunteered his services or property without compensation.

(b) Compensation for property shall be only if the property was commandeered, seized, taken, condemned, or otherwise used in coping with a disaster and this action was ordered by the Governor. The State shall make compensation for the property so seized, taken or condemned on the following basis:

(1) In case property is taken for temporary use, the Governor, within 30 days of the taking, shall fix the amount of compensation to be paid for such damage or failure to return. Whenever the Governor shall deem it advisable for the State to take title to property taken under this section, he shall forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, or by the best means available, and forthwith cause to be filed a copy of said notice with the Secretary of State.

(2) If the person entitled to receive the amounts so determined by the Governor as just compensation is unwilling to accept the same as full and complete compensation for such property or the use thereof, he shall be paid seventy-five per centum (75%) of such amount and shall be entitled to recover from the State of North Carolina in an action brought in the superior court in the county of residence of claimant, or in Wake County, in the same manner as other condemnation claims are brought, within three years after the date of the Governor's award. (1977, c. 848, s. 2.)

§ 166A-12. Nondiscrimination in civil preparedness. — State and local governmental bodies and other organizations and personnel who carry out civil preparedness functions under the provisions of this Chapter are required to do so in an equitable and impartial manner. Such State and local governmental bodies, organizations and personnel shall not discriminate on the grounds of race, color, religion, nationality, sex, age or economic status in the distribution of supplies, the processing of applications and other relief and assistance activities. (1975, c. 734, s. 3; 1977, c. 848, s. 2.)

§ 166A-13. Civil preparedness personnel. — (a) No person shall be employed or associated in any capacity in any civil preparedness agency established under this Chapter if that person:

(1) Advocates or has advocated a change by force or violence in the constitutional form of the Government of the United States or in this State;

(2) Advocates or has advocated the overthrow of any government in the United States by force or violence;
(3) Has been convicted of any subversive act against the United States;
(4) Is under indictment or information charging any subversive act against the United States; or
(5) Has ever been a member of the Communist Party.

Each person who is appointed to serve in any civil preparedness agency shall, before entering upon his duties, take a written oath before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

"I, ..., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina, against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I, nor have I ever knowingly been, a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence; and that during such time as I am a member of the State Civil Preparedness Agency I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence, so help me God."

(b) No position created by or pursuant to this Chapter shall be deemed an office within the meaning of Article 6, Section 9 of the Constitution of North Carolina. (1951, c. 1016, s. 10; 1975, c. 734, ss. 14, 16; 1977, c. 848, s. 2.)

§ 166A-14. Immunity and exemption. — (a) All functions hereunder and all other activities relating to civil preparedness are hereby declared to be governmental functions. Neither the State nor any political subidivison thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any civil preparedness worker complying with or reasonably attempting to comply with this Chapter or any order, rule or regulation promulgated pursuant to the provisions of this Chapter or pursuant to any ordinance relating to any civil preparedness measures enacted by any political subidivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) The rights of any person to receive benefits to which he would otherwise be entitled under this Chapter or under the Workers' Compensation Law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of civil preparedness functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized civil preparedness worker who shall, in the course of performing his duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "civil preparedness worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing civil preparedness services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof.

(e) Any civil preparedness worker, as defined in this section, performing civil preparedness services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties,

immunities and privileges he would ordinarily possess if performing his duties in the State, or political subdivision thereof in which normally employed or rendering services. (1957, c. 950, s. 4; 1975, c. 734, s. 14; 1977, c. 848, s. 2; 1979, c. 714, s. 2.)

Editor's Note. — The 1979 amendment, effective July 1, 1979, substituted "Workers' " for "Workmen's" in subsection (b).

§ 166A-15. No private liability. — Any person, firm or corporation owning or controlling real or personal property who, voluntarily or involuntarily, knowingly or unknowingly, with or without compensation, grants a license or privilege or otherwise permits or allows the designation or use of the whole or any part or parts of such real or personal property for the purpose of sheltering, protecting, safeguarding or aiding in any way persons shall, together with his successors in interest, if any, not be civilly liable for the death of or injury to any person or the loss of or damage to the property of any persons where such death, injury, loss or damage resulted from, through or because of the use of the said real or personal property for any of the above purposes. (1957, c. 950, s. 3; 1977, c. 848, s. 2.)

§ 166A-16. Severability. — If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable. (1977, c. 848, s. 2.)

Chapter 167.

State Civil Air Patrol.

Sec.

§ 167-2: Repealed by Session Laws 1979, c. 516, s. 6, effective May 4, 1979.

Cross Reference. — As to transfer of the State Civil Air Patrol to the Department of Crime Control and Public Safety, see § 143B-475.

As to the State Civil Air Patrol generally, see §§ 143B-490 through 143B-492.

Chapter 168.

Handicapped Persons.

Article 1.
Rights.

ARTICLE 1.

Rights.

§ 168-1. Purpose and definition.

Legislative Intent. — The legislature intended to grant broad protection of basic rights to all persons with any type of disability, and additionally sought to grant particular protection to an especially disabled group (the "visually handicapped") by three sections dealing with that group (as defined in § 111-11): §§ 168-4, 168-5 and 168-7. Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687 (1979).

Liberal Construction. — This chapter is a remedial statute, and should be construed broadly rather than narrowly to achieve its purposes. Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687 (1979).

"Visual Disability" Not Limited to "Vissually Handicapped." — The term "visual disability" as used in this section includes as its most serious gradation the "visually handicapped" as defined in § 111-11, but also includes persons with visual impairments less serious than those encompassed by the term "visually handicapped." Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687 (1979).

Criminal and Civil Enforcement of Chapter. — Chapter 168 of the General Statutes, entitled "Handicapped Persons," can be criminally enforced even though no criminal penalty is prescribed. Chapter 168 of the General Statutes of North Carolina, entitled "Handicapped Persons," can be civilly enforced even though no specific civil remedy is prescribed. Opinion of Attorney General to Honorable James B. Hunt, 19 November 1975.

§ 168-2. Right of access to and use of public places.

Quoted in Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687 (1979).

§ 168-3. Right to use of public conveyances, accommodations, etc.

Quoted in Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687 (1979).

§ 168-4. May be accompanied by guide dog.

Legislative Intent. — The legislature intended to grant broad protection of basic rights to all persons with any type of disability, and additionally sought to grant particular protection to an especially disabled group (the "visually handicapped") by three sections dealing with that group (as defined in § 111-11): this section and §§ 168-5 and 168-7. Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687 (1979).

§ 168-5. Traffic and other rights of persons using certain canes.

Legislative Intent. — The legislature intended to grant broad protection of basic rights to all persons with any type of disability, and additionally sought to grant particular

protection to an especially disabled group (the "visually handicapped") by three sections dealing with that group (as defined in § 111-11): §§ 168-4, 168-7 and this section. Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687 (1979).

§ 168-6. Right to employment.

Cause of Action Stated. — A complaint which alleged that the plaintiff had been denied employment solely because of his glaucoma, that the defendant had a long-standing policy of denying employment to persons situated similarly to himself, and that his disability did not impair his ability to perform job duties sufficiently stated a cause of action to enforce rights accruing under this chapter. Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687 (1979).

§ 168-7. Guide dogs. — Every visually handicapped person who has a guide dog, or who obtains a guide dog, shall be entitled to keep the guide dog on the premises leased, rented or used by such handicapped person. He shall not be required to pay extra compensation for such guide dog but shall be liable for any damage done to the premises by such a guide dog. No person, firm or corporation shall refuse to sell, rent, lease or otherwise disallow a visually handicapped person to use any premises for the reason that said visually handicapped person has or will obtain a guide dog for mobility purposes. (1973, c. 493, s. 1; 1977, c. 659.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added the third sentence.

Legislative Intent. — The legislature intended to grant broad protection of basic rights to all persons with any type of disability, and additionally sought to grant particular protection to an especially disabled group (the "visually handicapped") by three sections dealing with that group (as defined in § 111-11): §§ 168-4, 168-5 and this section. Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687 (1979).

§ 168-8. Right to habilitation and rehabilitation services.

Quoted in Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687 (1979).

§ 168-9. Right to housing.

Quoted in Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687 (1979).

§ 168-10. Eliminate discrimination in treatment of handicapped and disabled. — Each handicapped person shall have the same consideration as any other person for individual accident and health insurance coverage, and no insurer, solely on the basis of such person's handicap, shall deny such coverage or benefits. The availability of such insurance shall not be denied solely due to the handicap, provided, however, that no such insurer shall be prohibited from excluding by waiver or otherwise, any pre-existing conditions from such coverage, and further provided that any such insurer may charge the appropriate premiums or fees for the risk insured on the same basis and conditions as insurance issued to other persons. Nothing contained herein or in any other statute shall restrict or preclude any insurer governed by Chapter 57 or Chapter 58 of the General Statutes from setting and charging a premium or fee based upon the class or classes of risks and on sound actuarial and

underwriting principles as determined by such insurer, or from applying its regular underwriting standards applicable to all classes of risks. The provisions of this section shall apply to both corporations governed by Chapter 57 and Chapter 58 of the General Statutes. (1977, c. 894, ss. 1, 2.)

Editor's Note. — Session Laws 1977, c. 894, s. 3, makes this section effective on Jan. 1, 1978.

§§ 168-11 to 168-13: Reserved for future codification purposes.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE
Raleigh, North Carolina

October 15, 1979

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1979 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN
Attorney General of North Carolina

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